

FEDERAL TRADE COMMISSION

FOLLOW THE LEAD:

AN FTC WORKSHOP ON LEAD GENERATION

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1           PANEL 4: OVERVIEW OF CONSUMER PROTECTION CONCERNS AND  
2                                   THE LEGAL LANDSCAPE

3           MS. BROWN: Hello, everyone. Thank you for joining  
4 us after lunch. I know that's a challenge, so we appreciate  
5 that we still have a showing. Okay, so, I'm Sandhya Brown.  
6 I'm an Assistant Director in the Division of Financial  
7 Practices here at the FTC, and I have the pleasure of  
8 moderating our fourth panel, which is going to be addressing  
9 consumer protection concerns and the legal landscape.

10           I think we see this as an opportunity to identify  
11 some of the specific practices that may pose a risk to  
12 consumers and to consider the legal principles that apply to  
13 lead generation activity. And as the government agency  
14 that's responsible for enforcing the FTC Act, of specific  
15 concern to us here at the FTC are the legal principles of  
16 deception and unfairness. And, so, we'll likely spend quite  
17 a bit of our time with this panel discussing those issues in  
18 particular.

19           Just a quick note on format. We intend this  
20 discussion to be very much a discussion, and so while I will,  
21 of course, be posing specific questions and perhaps calling  
22 on some of the panelists specifically, I've invited them to  
23 chime in at any time or if there's just such hot conversation  
24 going on and they can't get in, they're going to signal to me  
25 that they'd like to be called upon by turning their table

1 tents on end. So, we really hope to have a very engaging  
2 discussion on these important issues.

3 So, we have a great group of panelists, and I would  
4 like to introduce them all to you. And, so, how we'll do  
5 that is I'll just go down the line. I'll ask each of them to  
6 introduce themselves, their organization, and give you maybe  
7 just 30 seconds or so on how their work relates to lead  
8 generation.

9 MR. MIERZWINSKI: Ed Mierzwinski. I'm with the  
10 U.S. Public Interest Research Group, and when I came to  
11 Washington 25 years ago, I started investigating privacy and  
12 the Fair Credit Reporting Act. I've been fighting the credit  
13 bureau wars all that time. We've made progress, but it's  
14 like -- I hope it's not the Hundred Years War, but it has  
15 been a long battle, and as part of that, I obviously morphed  
16 into big data, data brokers, and the use of lead generation.  
17 And I have a project on big data and financial opportunity.

18 MS. BROWN: Thanks, Ed.

19 Next, Jonathan Pompan.

20 MR. POMPAN: Thanks, Sandy. Good afternoon. My  
21 name is Jonathan Pompan, and it's my privilege and honor to  
22 represent online advertisers and lead generators and  
23 companies in the consumer financial services space. I'm at  
24 the law firm of Venable here in Washington, DC. And I just  
25 would like to just note, of course, that my comments today

1 are purely mine and don't represent the views of my clients  
2 or of the firm Venable. Thank you.

3 MS. BROWN: Next we have Pam Dixon.

4 MS. DIXON: Hi, I'm Pam Dixon. I'm the Founder and  
5 Executive Director of the World Privacy Forum. We're a  
6 nonprofit public interest research group, and our work has  
7 focused on a lot of issues. If you scratch underneath the  
8 surface of all of them, you'll find a focus on data flows and  
9 how those data flows impact the consumer. And lead  
10 generation came up in a report we wrote approximately three  
11 years in its research called The Scoring of America.

12 MS. BROWN: Thank you, Pam.

13 Next to Pam, we have the FTC's own Michael Waller.

14 MR. WALLER: My name's Michael Waller, and I, a few  
15 years ago, was fortunate enough to be on a team that  
16 investigated a scam run by a series of companies. One was  
17 called Ideal Financial Solutions, and we filed a case and  
18 discovered that the scam had bought consumer information --  
19 very sensitive consumer information and used that information  
20 to take money directly from consumer accounts.

21 And in that investigation, later on in the  
22 litigation that followed, we discovered some of the  
23 organizations that sold that information to Ideal Financial  
24 Solutions were lead generators or data brokers. And, so, now  
25 I've been lucky to be a part of a couple of investigations

1 and a lawsuit that we have filed now and are litigating  
2 called FTC vs. SiteSearch that involves such a data broker.

3 MS. BROWN: Thanks, Michael.

4 And at the end of the table, we have Marty Collins  
5 from QuinStreet.

6 MR. COLLINS: Thanks, Sandy. Marty Collins, I'm  
7 the Senior Vice President of Corporate Development, Legal and  
8 Compliance at QuinStreet. QuinStreet is a publicly traded  
9 company that does online performance marketing, including in  
10 lending and the education space. And per my titles, in that  
11 capacity, I'm involved in both negotiating agreements with  
12 clients, with publishers, trying to make sure that there's  
13 compliance throughout our network, and having a keen  
14 understanding of the regulation that comes not only from the  
15 FTC across industry but within each of our highly regulated  
16 industry verticals.

17 MS. BROWN: Great, thank you. I think we can be  
18 prepared for a really discussion with all of you. So, let's  
19 begin. The first question I have is for the whole panel, and  
20 it's this. Based on your experience and what you've heard  
21 today about lead generation practices, what single consumer  
22 protection concern strikes you as the most important and  
23 deserving of our attention? I'll start with you, Ed, and  
24 anyone else can chime in, but I'll probably call on all of  
25 you.

1           MR. MIERZWINSKI: Well, thank you for the question,  
2           and I find the entire online ecosystem that is designed to  
3           track consumers and then to place them in boxes based on  
4           their e-score or their lead score and then to target them for  
5           products that are to the benefit primarily of the company  
6           buying the lead rather than necessarily to their own benefit,  
7           I find the entire process too opaque and too under-regulated.  
8           So, I think the entire online marketing and advertising and  
9           lead generation system is a consumer protection problem, of  
10          both deception and unfairness and maybe abuse, as well.

11          MR. POMPAN: Well, Ed, I think I beg to differ. I  
12          think it's -- before we go any farther, I think we need to  
13          make one thing clear, and that really is, is that lead  
14          generation, particularly for financial products and services  
15          aimed at consumer, but also other highly regulated verticals,  
16          some of which we've heard about today, some of which we have  
17          not, exist in a marketplace that is multilayered, that is, is  
18          that lead generation exists in a marketplace that has both  
19          legal and regulatory requirements that do apply and clearly  
20          apparently are enforced because the two panels this morning  
21          discussed that.

22          And then on top of that, you also have the layer of  
23          regulation and requirements that come through the customer,  
24          the end purchase of the lead, who in the case of a consumer  
25          financial product or service is regulated not just by the

1 Federal Trade Commission but also in most cases going to be  
2 the Consumer Financial Protection Bureau, state attorneys  
3 general offices, state regulatory agencies, and the list goes  
4 on.

5 So, I think from a consumer protection standpoint,  
6 there are robust protections in place clearly for industry,  
7 guidance and education is always appreciated. And the  
8 guidance and education that can come both from the FTC and  
9 other agencies, as well as other groups. And that guidance  
10 and education is, of course, not just for the benefit of  
11 industry but, of course -- at the end of the day for the  
12 benefit of the consumer.

13 And, so, from a consumer protection standpoint, the  
14 ability to have a clear set of understandings of what the  
15 expectations are for the advertising and marketing that is  
16 legitimate and without question not fraudulent, should be  
17 able to be able to move forward. Thank you.

18 MS. BROWN: Thanks, Jonathan. Pam, should I go  
19 down  
20 the line?

21 MS. DIXON: Why not? We started this way. So,  
22 thank you. The question actually -- it's a great question.  
23 Identity has always been a double-edged sword. On one hand,  
24 we need a lot of pieces of information to confirm identify  
25 and authenticity and to prevent fraud. On the other hand,

1 those same data bits can create privacy issues when  
2 unconstrained or used out of context.

3 So, it strikes me that if you look across the  
4 verticals, and a vertical that was not discussed here but  
5 that is very important in lead generation, is health. And  
6 that is a profoundly troubling vertical with a lot of  
7 unfairness and deception issues, all sorts of issues. But  
8 each vertical has a slightly different flavor, but what they  
9 have in common is what I call the fraud loophole issue.

10 So, there is absolutely no chance that educational  
11 verticals and financial verticals will not require, for  
12 example, a zip code or gender or marital status and other  
13 bits of data. So, I believe that the challenge before us how  
14 do we -- how do we address the fraud issues and the  
15 authentication and identification issues while at the same  
16 time protecting an individual's privacy and ensure that that  
17 information is used in a compliant way and in a way that does  
18 not, you know, have downstream use that harms the consumer.

19 I believe that each vertical may have a different  
20 response to that question, and that's fine, because this area  
21 is quite complex. So, there's not necessarily going to be  
22 one solution, but it would be a great problem to target.

23 MR. WALLER: Obviously, my exposure to this is much  
24 narrower than the other folks on the panel, so I can only  
25 talk about what I've had experience with in the last few

1 years. I first also want to add that obviously my views are  
2 just my own; I can't speak for the Commission or any other  
3 FTC staff.

4 But what I'll say is there's an issue that concerns  
5 me greatly, and that is still down to sort of two larger  
6 concepts: the availability and the longevity of the data.  
7 So, what happens -- and I'll give you an example what we have  
8 seen in talking to folks in the industry and doing  
9 interviews, and in our cases is that in some shops you'll  
10 have consumers that through the processes that we heard about  
11 earlier today will apply online with a variety of different  
12 publishers or different sources online, but a very small  
13 percentage of those folks are actually qualified for a loan.

14 And, so, the vast majority -- 95 percent of those  
15 applications, which means 95 percent of the folks, those  
16 Social Security numbers and bank account numbers, fall to the  
17 cutting room floor and are referred to in the industry as  
18 remnants. So, from the consumer's perspective and maybe my  
19 perspective, you would think, well, that data is useless; it  
20 would just go away or be deleted or something like that.

21 But, of course, that's not the case. Data brokers,  
22 publishers, folks who have this information -- and a lot of  
23 people have access to this information along the chain  
24 because it's shared freely, even if it isn't purchased --  
25 they have -- there's a lot of pressure on them to use, to

1 monetize what they consider an asset, which is just a big  
2 pile of data, a big pile of data points.

3           And, so, that information is sold and resold, and  
4 essentially what's created is over a period of time the  
5 consumers just become suckers. It's just a sucker list. And  
6 people buy that information for all different kinds of  
7 reasons. And our situation was most concerning, at the FTC;  
8 what we've seen, is that fraudsters buy this data. It's easy  
9 to access, easy to buy, easy to find, and they use it  
10 sometimes for really shocking outright fraud and theft. And  
11 sometimes it's a little more subtle than that, but I think  
12 that's the thing that most concerns me.

13           MR. COLLINS: Thanks, Michael. Michael and I were  
14 talking on the -- in the green room, which is not that grand,  
15 don't get the wrong idea, on the way in, though, the -- so,  
16 part of my job is to make sure that I'm not buying data from  
17 the fraudsters, because that's the commitment that I've made  
18 to my clients, which is kind of a minimum condition for doing  
19 business.

20           And, so, the way we think about it is that we have  
21 a responsibility for context. We have a responsibility for  
22 the context in which data is acquired. We always have the  
23 responsibility to delivery data securely. And we have the  
24 responsibility for knowing how that data is used. You can't  
25 go online and become my client. Whatever vertical you're in,

1 you have to be licensed; you have to prove that you're  
2 licensed; you have to prove that you're licensed in the  
3 appropriate states, something that came up earlier.

4           So, we feel, at least in our part of the business,  
5 that we have a responsibility to know the sources, to know  
6 the clients, to provide transparency to the sources.  
7 Jonathan would tell you that that's hard. We agree. We  
8 think it takes technology; it takes scale. The PerformLine  
9 and LeadiD and other people that you saw earlier today, their  
10 outbox to the client, issues that they see in the network,  
11 that's my inbox in compliance.

12           So, I have to scour my network every day to keep  
13 people that are not being transparent, they might not be  
14 varsity fraudsters that Michael sees, but I have to keep  
15 borderline misleading people out of my network every day  
16 because that's a fundamental commitment that we make, and  
17 we're a public company, so we're easy to find if we don't  
18 deliver on that commitment.

19           MS. BROWN: Thank you to everyone. I'd like to  
20 open it up for anyone to react to what they've heard from one  
21 another, but I'd also like to throw out a couple issues that  
22 have come up throughout the day to get our reaction to  
23 whether or not these things might also be concerning, because  
24 other panelists seem to raise them in a way that struck me as  
25 a potential concern.

1           So, on the lending panel, an issue that came up was  
2     the collection by lead generators of information that's  
3     really sensitive, that may be used by the lender that  
4     ultimately purchases the lead -- the Social Security number,  
5     the bank account information -- but it's unclear whether or  
6     not the lead generators need to collect that information or  
7     possess that information, be able to resell it. Is that a  
8     concern? Does anyone here want to react to that issue that  
9     was raised?

10           MS. DIXON: So, that is a concern. As I mentioned  
11     on that panel, I'll reiterate, I do think we're training  
12     consumers inappropriately to give up a lot of information to  
13     nonprimary sources. And that's a larger problem, and I think  
14     we can address that by installing some procedural steps that  
15     would, you know, perhaps add a step or two, and I think there  
16     are some other procedural protections that could be installed  
17     there that would not be onerous and yet would be highly  
18     protective. So, that seems like a really good potential area  
19     for exploration and further work.

20           MS. BROWN: Anyone else on that issue?

21           MR. MIERZWINSKI: Well, I would simply agree with  
22     Pam. I think that ubiquity of PII on the internet and that  
23     is shared and sold through a web and network of companies and  
24     maintained for a very long time also raises the threat of  
25     more data breaches. I mean, we're fixing the credit card

1 data breach problem by putting chips on credit cards, but we  
2 don't have a chip that protects our Social Security number  
3 anywhere. And once it's out there, you can use it as a  
4 really quick link for data append. And what people --  
5 consumers might opt into the collection of data if they're  
6 even asked, but they're usually not really asked. They want  
7 a loan today, so they're going to fill out the form. They  
8 don't realize that the company is collecting ten pieces of  
9 information about them and using it to aggregate another 100  
10 pieces that they'll keep forever and that they'll sell and  
11 resell, including, as Michael said, even to bad guys.

12 MS. BROWN: Thanks, Ed. I'm going to raise another  
13 issue, unless anyone wants to chime in on that one. I  
14 thought it was interesting on the very first panel, I think  
15 it was our first speaker, who described leads as consumers  
16 raising their hand. And, so, the question I have for you  
17 guys is whether or not there is a concern about whether  
18 consumers are, in fact, raising their hand for their  
19 information to be used in all the ways in which it is  
20 actually used. Michael.

21 MR. WALLER: So, I'll say that, you know, in my  
22 limited experience, I've talked to consumers and seen  
23 consumers who certainly didn't raise their hand for what  
24 ended up happening to them. And I'm not trying to be, you  
25 know, sort of cute about that. They obviously didn't raise

1 their hand to be defrauded, but they also didn't raise their  
2 hand to have their information shared with text messagers,  
3 email marketers, for products completely unrelated to the  
4 payday loans that they applied for.

5 Now, I've been to some payday loan websites and  
6 seen the disclosure statements on the websites, and they are  
7 breathtakingly -- I don't know what the right word is, but  
8 they do say we're going to sell your information to basically  
9 anybody who we want to. But even so, I find it hard to  
10 believe -- in fact, it's I think virtually impossible for any  
11 of those consumers to have fully anticipated what they might  
12 be raising their hand for.

13 So, I don't think that is what -- I certainly don't  
14 think of a lead that way. I'll just put it that way, which I  
15 think begs a question, which is what happens to this data or  
16 what should happen to this data. If it's just being  
17 collected and hanging out and it's just sitting in servers  
18 waiting for people to repackage it and sell it, it is, in my  
19 mind, extremely dangerous.

20 And this is highly sensitive information that can  
21 do a lot of harm. And, so, I haven't heard today someone  
22 say, well, this is -- you should just delete the stuff, you  
23 know, after you see it. I'll give you a brief example. I  
24 have -- and we talked earlier about ping trees here, and I've  
25 talked to some people in the industry who've described the

1 ping trees to me and said, oh, well, you know, as we're  
2 showing this data to a potential buyer, we show them the  
3 complete data so the potential buyer sees the Social Security  
4 number, sees the bank account number, sees all of that.

5 And they choose not to buy it, perhaps, but this  
6 isn't like -- you know, I imagine someone showing me a  
7 sheet of paper and me saying, no, no, no, I won't take that.  
8 But, no, they transfer the data over to the potential buyer,  
9 who -- and we know this because we saw this in some of the  
10 investigations -- that some of those buyers keep that data.  
11 So, now the data has been -- it's kept. It hasn't been  
12 purchased, and maybe the person who has it and that extra  
13 person, the potential buyer, doesn't use it. Maybe they just  
14 keep it for their own purposes. But, nonetheless, it's been  
15 copied and spread. And, so, the data is in more hands.

16 And I'm curious to know if anybody in the industry  
17 can tell me if they're -- what the best practices are for  
18 that data; is it just hung onto or is it just a promise not  
19 to use, but then there's the danger that at some point in  
20 time the business model will change; the business will be in  
21 trouble and need to monetize that asset. So, that's a  
22 question I have.

23 MS. BROWN: Michael, it's a nice segue. It allows  
24 people to stick around for Panel 5, which is going to be  
25 talking about best practices. I'm sorry, it looks like a few

1 people want to chime in. Marty, I'll start with you, and  
2 then Pam.

3 MR. COLLINS: Yeah, I mean, I can't speak to the  
4 industry practices all the way down the food chain,  
5 including, you know, people that are less transparent, but  
6 from where we sit, I would agree -- I definitely agree with  
7 Pam and Ed and others that financial information, that Social  
8 Security number that unlocks the credit report, exposing that  
9 data, and really, I think Pam's direction is let's really  
10 reduce the amount of time that's generated by using context,  
11 and then I think Michael's point is what are the  
12 responsibilities of the people that get that data.

13 I mean, that part of the data stream is downstream  
14 from us. We're generally at the phone book, the white pages  
15 level of data. There's a lot of intentionality in that data.  
16 There's a lot of intentionality in click streams, and the  
17 business that we're in is indicating quality is intent, is  
18 one of the signals that we're looking.

19 So, the answer to your question, in our part of the  
20 industry, we don't have that much data; we get rid of it as  
21 quickly as possible. I think McConville pointed out earlier  
22 today it ages out. Leads become old. Remnants are not part  
23 of our business, but we get rid of it unless the federal or  
24 state government says we're supposed to hang onto it. But I  
25 think perhaps in the financial sector and certainly with

1 fraud, they're not really operating under those strictures.

2 MS. BROWN: I think Pam wanted to make a point, and  
3 then I might have us move on to our next question.

4 MS. DIXON: Just a really quick point. One of the  
5 really strange factors in this area is the newly available  
6 amount of data from a variety of mortgage applications and  
7 whatnot. It's not immediately identifiable but it doesn't  
8 take much to identify that data and add it to other consumer  
9 data.

10 So, I do think that this is a -- this is a  
11 regulatory gap that does need to be addressed in terms of  
12 what do you do with data that you have on hand and that you  
13 have gotten. And this will not be transparent to consumers.  
14 It doesn't matter how wonderful the privacy policy is;  
15 there's just no way they could read this into the situation.

16 And this goes back to the original question, you  
17 know, has a consumer raised their hand for this. And the  
18 answer is no, so what do we do. And I don't think it's --  
19 transparency is great, but it won't fix this problem. We're  
20 going to need some protections, very specific to this  
21 problem.

22 MS. BROWN: Thank you. Okay, so I think it makes  
23 sense now, having heard so much from you guys about concerns  
24 and having heard them throughout the day, for us to shift now  
25 to talking a little bit about the legal frameworks that might

1 address some of these concerns.

2 I foreshadow that we might be spending a fair  
3 amount of our time on concepts of unfairness and deception,  
4 but before we get there, I would like to hear from a few of  
5 you just briefly about what other types of laws and  
6 regulations apply to lead generation practices that industry  
7 members should be aware of.

8 Marty, perhaps I'll start with you as leading a  
9 group that actually deals in multiple verticals and probably  
10 has to engage with a lot of different laws and regulations.

11 MR. COLLINS: Yeah, I mean, pick a vertical, pick a  
12 geo, pick a subcategory. There's multiple layers of  
13 regulation that we're responsible for. You know, again,  
14 context not being misleading, but the federal and state  
15 regulation of mortgage, the state-by-state regulation in  
16 insurance, and then subcategories of our society that we owe  
17 a higher duty to service members. You know, pick a vertical,  
18 pick a geo, and I've got a matrix and I probably have an  
19 outside counsel that's reminding me of what our  
20 responsibilities are.

21 MS. BROWN: Ed, do you have more to add on that?

22 MR. MIERZWINSKI: Well, I mean, I could talk for  
23 the entire time, but I'll try to be brief, on some of the  
24 things. But take for example payday loan lead generation,  
25 which was talked about a lot earlier today. I believe that

1 if I logged on to my computer today in Washington, DC, where  
2 payday loans are illegal, I would be led to a number of  
3 payday lending lead generation sites.

4 So, are they legal? Will they actually offer me a  
5 loan? I haven't tested it that far, but I bet some of them  
6 would. My biggest concern has historically been if you have  
7 had the unfortunate task of reading some of my long papers,  
8 has been the concern that we used to have the Fair Credit  
9 Reporting Act, and almost every transaction involved the  
10 decision that involved the credit relationship between the  
11 lender and the consumer.

12 Now, before we get to a lending transaction, we've  
13 got this marketing transaction where the consumers are boxed  
14 into different lead categories. And, so, my biggest concern  
15 is that we're losing the protection of the Fair Credit  
16 Reporting Act when we're making all of these decisions and  
17 creating all of these scores for marketing purposes before we  
18 even get to the lender. So, the lender is getting  
19 essentially a set of people that he should or she should be  
20 able to have to comply with the Fair Credit Reporting Act,  
21 but they may be getting around it. They may be using proxies  
22 to avoid the Equal Credit Opportunity Act.

23 So, I think both of those laws are laws that I  
24 would like looked at more closely in this context.

25 MS. BROWN: Appreciate that. I'd like to now turn

1 us to the concepts of unfairness and deception, and to  
2 perhaps give us some context, I'm going to ask Michael  
3 specifically to just briefly describe how the FTC has applied  
4 those principles to the lead generation context to date.

5 MR. WALLER: Sure. I'll give you, again, sort of a  
6 very high level, but the FTC Act, you know, prohibits unfair  
7 deceptive trade practices. And both the concept of  
8 unfairness and deception have played a role in the lead  
9 generation area in terms of our interpreting its behavior --  
10 the behaviors in that area.

11 But quickly, deception is an act, omission,  
12 practice, something that's likely to mislead a consumer who's  
13 acting reasonably under the circumstances. So, it's from the  
14 perspective of that reasonable consumer, and it's from the  
15 perspective, if that reasonable consumer is part of a  
16 targeted group, of a reasonable consumer in that targeted  
17 group. That's important to understand because if you're  
18 targeting as a marketer certain groups like the terminally  
19 ill or something like that, then you'll need to, you know,  
20 think about what a reasonable consumer in that group, how  
21 they would be interpreting a statement. And, then, of  
22 course, it needs to be material.

23 And unfairness, it's any act or practice that  
24 causes or is likely to cause substantial consumer injury,  
25 which a consumer could not reasonably avoid and that is not

1 weighed by countervailing benefits to consumers or  
2 competition. We've applied both those concepts in a variety  
3 of different contexts. I'll just go through a couple  
4 different sort of frameworks or fact patterns.

5 We had a case against a service provider, this is  
6 FTC v. LeadClick and LeanSpa, the LeanSpa litigation. And  
7 what was happening is a service provider was providing a  
8 platform and a network for marketers to put content, but  
9 helped develop some of that content; purchased ads for --  
10 they were weight loss products and that sort of thing. So,  
11 there was liability there. There were deceptive claims made  
12 by the marketer, the person developing the content, but the  
13 network provider was liable. That was under a deception  
14 theory.

15 We've also gone after publishers directly, you  
16 know, and there's one case, the GoLoansOnline.com, and in  
17 that case there was a -- operating a mortgage website, which  
18 was to link consumers with lenders, but the website itself  
19 made all kinds of claims about interest rates and that sort  
20 of thing that violated a number of laws. We also brought an  
21 FTC Act deception count in that case.

22 And, also, and against a lead generator, the lead  
23 generator didn't tell the truth about where the offer came  
24 from, so the lead generator -- this is the FTC vs. Mallett,  
25 and the lead generator said that the Federal Government was

1 making claims about relief that could be granted to people,  
2 and that, of course, wasn't true. And, so, the case there  
3 was a deception case, but the lead generator was making a  
4 claim about where the claim itself came from.

5 In the unfairness context, we've also brought a  
6 number of cases. Often, they have to do with the use or sale  
7 of the -- so the use of the information and more specifically  
8 sometimes the sale of the information. So, for example,  
9 there was the FTC vs. Accusearch, and this was a --  
10 Accusearch provided a platform for consumers to come and  
11 purchase phone records that could only be obtained, you know,  
12 via some violation of the Telecommunications Act. Accusearch  
13 itself didn't necessarily perform illegal activities, but it  
14 took the consumer request and found an investigator,  
15 effectively, who would do the dirty work, and then posted  
16 that information for the buyer of the information on the  
17 website. And we brought an unfairness case, and there was  
18 liability there.

19 In another unfair use case, it was a recent case,  
20 FTC vs. Cornerstone and the Bayview case, in which the  
21 debt -- these are debt brokers. They used consumer --  
22 sensitive consumer information for marketing purposes,  
23 effectively posting large quantities of SPII, consumer  
24 account numbers and other sensitive information, to show the  
25 kind of information they had for sale. And, by the way, that

1 information was up on line for anyone and everyone to see,  
2 unprotected.

3           And then there are the cases that I have personal  
4 experience with. So, for example, the LeapLab case, and this  
5 is a case where there was a data broker who did some of their  
6 own lead generation, and we alleged that they bought payday  
7 loans -- full-form payday loans from many, many different  
8 sources and then sold that information to known fraudsters,  
9 to a non-lender who had no legitimate need for the data and  
10 who, in fact, used the data to steal from consumers.

11           MS. BROWN: Thanks, Michael. I'm being given the  
12 30-minute warning, and I think this is a good opportunity to  
13 remind everyone that if you have any questions to please  
14 write them on your cards and they'll be collected and  
15 hopefully we'll have some time at the end to bring some of  
16 those into the mix.

17           Okay, so, now I'd like to ground -- now we've had  
18 that sort of nice framing from Michael -- ground some of the  
19 concerns we've heard about lead generation practices into how  
20 they intersect with these legal principles. So, we've heard  
21 a lot about the nontransparency of lead generation. And, so,  
22 my first question for the group is a fairly fundamental one.  
23 I'd like to hear from you whether or not you think it's  
24 deceptive to collect information from consumers without  
25 disclosing all the ways in which that information might be

1 used and without disclosing that it may be sold to multiple  
2 parties. Could that be deception?

3 MR. MIERZWINSKI: Well, I'd say yes, and I think  
4 it's very, very clear that the entire lead generation and the  
5 broader ecosystem that it's part of rely on the fact that the  
6 consumer doesn't really know what he or she -- what the  
7 rabbit hole is that they're falling into, because they're  
8 really falling into a rabbit hole with a lot of mirrors and a  
9 lot of tricks.

10 And it's not just the information that they're  
11 collecting about you. You might think, oh, this is okay; I'm  
12 only giving a little bit of information so they can make a  
13 quote to me. But they are data appending everything else  
14 they can find out about from you, from every other website.  
15 And they're not being clear that they're doing any of this.

16 And, so, I'll just take this opportunity to give a  
17 commercial for the FTC. I think that their cases that  
18 they've brought that Michael has described a few of the most  
19 important ones, but over the years to develop a law of  
20 privacy, have been very important using only their Section 5  
21 authority. They've done some tremendous work.

22 MS. BROWN: Does anyone else want to speak to that?  
23 Jonathan?

24 MR. POMPAN: Sandy, I think there's a tendency here  
25 to paint everything with a very broad brush, and I think we

1       should take a step back. You know, ultimately from the  
2       consumer perspective, lead generation is about connecting the  
3       consumer to a product or service -- or produce and services.

4               And, you know, we've talked a lot about context  
5       today that's come up a couple times on this panel and some  
6       others. And I think context is really going to be important  
7       here. You know, the consumer's reasonable expectation  
8       regarding the process that they're going to go through or the  
9       process that's going to be used is going to be important and  
10      taken into -- it has to be taken into account what they're  
11      seeing, what the overall net impression of the website or the  
12      ad or the telephone call, whatever it might be, has to be  
13      taken into consideration.

14             And I think we're sort of -- there's a tendency to  
15      categorically assume that everything has data appended to it,  
16      that it's all one sort of common format, and in some cases I  
17      think alleged lack of disclosure. But the reality is is that  
18      there's a lot of websites out there that have disclosure;  
19      they have context; and, you know, that the consumer will  
20      reasonably expect to be connected to products or services and  
21      they're reasonably connected to products and services, that  
22      they're looking for and that they've been searching for.

23             And, ultimately, if that's working and that's their  
24      expectation, there's a lot of guidance out there that  
25      suggests that that's a completely reasonable and appropriate

1 level of disclosure, what the consumer's expectation is. And  
2 one only has to go back -- there's a commission staff letter  
3 back in 2006 about the reasonable expectation of the consumer  
4 in the telemarketing context. There's many other situations  
5 like that, too.

6 And I think even some of the cases that are out  
7 there that Michael discussed, you know, in that situation, I  
8 think the issues were the reasonable expectation of the  
9 consumer may have been something else than what actually  
10 happened, but one has to take that into account.

11 MS. BROWN: Pam.

12 MS. DIXON: So, some very interesting -- first off,  
13 we have to remember that the ecosystem, the entire ball of  
14 wax that we're talking about, is tremendously complex. But I  
15 do think that the general principle here is that after an  
16 initial unfairness, as that initial unfairness or initial  
17 deception percolates through all of the layers, it just gets  
18 worse. And, so, pinpointing where that initial deception or  
19 unfairness happens is important.

20 So, ways of getting that done include what the  
21 consumer knows when they're going in and how they know it.  
22 Privacy policies are incredibly important, but they are not  
23 sufficient for this purpose in the really rapid online  
24 marketplace. If someone's at a payday loan site, or if  
25 someone's at an educational, you know, "fund your education"

1 site and they see that and they've been drawn in, there's  
2 just no way that a consumer that's in impulsivity mode is  
3 going to stop and read 7,000 words of detailed privacy  
4 policy.

5 So, how do we remedy that? There are any number of  
6 things that we could potentially do to remedy that. It could  
7 be a short form notice; it could be a "just in time" notice.  
8 If this is being done on a mobile application or a mobile  
9 phone, what could be done there? So, I do think there are  
10 remedies that need to be explored, and I'd love to see  
11 further work in that area.

12 But in general, I think if we can focus our efforts  
13 on identifying when the unfairness was introduced into the  
14 system, I think it would be very helpful and to have robust  
15 yet specific guidelines as to when that's happened.

16 MS. BROWN: Does anyone else want to speak to this  
17 one? Marty.

18 MR. COLLINS: Yeah, I'll try. I learned a lot  
19 before I took this job from reading Ed's work, and I commend  
20 all of you to take a look at it. It's not a polemic; it's  
21 well thought through. One of the points I disagree with him  
22 on, though, is that I don't think the average user cares  
23 whether Google or Bing is powering Yahoo's search this week.  
24 I don't think they care. And I think it's okay that they  
25 don't care as long as what -- whoever's powering it, whatever

1 data they're gathering, it's clear how it's being used.

2 And I think one of the functions that the FTC  
3 serves, including in the scrutiny of apps and otherwise, is  
4 sometimes people will -- even big people will change their  
5 privacy policies or terms of use, and people like Ed and  
6 others and Pam will identify it and take up the cause and  
7 maybe nip a bad approach in the bud.

8 But I don't -- lead generation is -- it's a  
9 matching engine. And I don't think people care that much  
10 whose code runs the matching engine. I think they care  
11 deeply about whether that matching engine can be trusted and  
12 what commitments that matching engine says it's going to do  
13 with respect to data and then actually what happens with that  
14 data.

15 MS. BROWN: So, I'd like to press people a little  
16 more specifically on this question of deception. There's  
17 perhaps a little bit of disagreement about whether or not in  
18 the abstract lead generation is a deceptive exercise. You  
19 know, when we analyze deception, the first question for us is  
20 is there something that's being misrepresented to consumers.  
21 So, as a first question when we're analyzing deception, where  
22 is the misrepresentation?

23 MS. DIXON: I think it varies depending on the  
24 vertical you're looking at, I really do. I think it's really  
25 difficult to paint it, you know, uniformly. But that being

1 said, I think, in general, if you are using consumer data in  
2 a way -- if you're applying, for example, in the financial  
3 vertical and all of a sudden your data is being used to  
4 market you something that had nothing to do with what you  
5 applied for, I think that we can call foul on that pretty  
6 easily. And I think that holds true if there is not a -- if  
7 the data is being applied unreasonably, that's a foul.

8 MS. BROWN: Does anyone else have thoughts on that?

9 MR. COLLINS: I mean, I would agree. I would tell  
10 you that in my experience looking into data, it's actually --  
11 I mean, that's not something that we do, but it's actually  
12 not that valuable because data only exists in context. I  
13 mean, you could photocopy the white pages and then ship it to  
14 my clients. That wouldn't make it a lead. It would have a  
15 lot of PII, but it wouldn't have any value.

16 And, so, gathering information in one context, in  
17 the context of getting an education, in the context of taking  
18 out a mortgage, and then attempting to resell that data to  
19 any kind of intelligent client that's going to be around, it  
20 actually doesn't have that much value. You have to know the  
21 context in which it was gathered. You have to know the  
22 context in which it was gathered, not for compliance  
23 purposes, but for math purposes, for pricing purposes.

24 And, so, legitimate gatherers of information,  
25 frankly, are not gathering information, A, and selling it, B,

1 because it doesn't have value in B because it's out of  
2 context.

3 MR. WALLER: I want to say something. I'm not  
4 going to talk about whether or not I think something would be  
5 deceptive or not. We have to obviously look at the  
6 particular fact pattern, but, you know, this idea that -- I'm  
7 going to disagree a little bit with Marty -- that information  
8 doesn't always necessarily need context. There are types of  
9 information and groupings of information that in and of  
10 themselves can be used in a variety of contexts in dangerous  
11 ways.

12 MR. COLLINS: Financial, Social Security,  
13 absolutely.

14 MR. WALLER: And that's what we see, financial  
15 fraud. And I -- we're talking a lot about what responsible  
16 players in the industry should or shouldn't be doing, but the  
17 fact of the matter is what we see, too, is that there are  
18 windows through which the irresponsible and fraudsters can  
19 climb to get this information, and it doesn't matter where  
20 the information came from to them.

21 So, that also sort of indirectly links to this idea  
22 of disclosure. I wonder, you know, how you would disclose to  
23 someone effectively what the dangers were. And I'm reminded  
24 of we have some guidance on disclosures in the mobile area --  
25 that's our dot-com disclosure guide, which has been updated

1 not that long ago for mobile -- giving guidance about  
2 advertising in the mobile space, but, you know, there is a  
3 point made in there that said, you know, when you have a  
4 disclosure but in the disclosure the ideas in the disclosure  
5 are very different from, you know, the language in the ad  
6 itself. So, if, in other words, if I go to a payday loan  
7 website and I click on a disclosure, a privacy disclosure or  
8 information use disclosure, and it says some things about  
9 sharing with affiliates, you know, the context can inform how  
10 I interpret that. This is just me speaking, by the way. But  
11 it's going to inform how I interpret that disclosure.

12 So, I don't know what you've have to do to get --  
13 to break the frame that people have in those quick  
14 interactions to make them realize that no, by selling it to  
15 other people, I mean literally everybody, anybody that will  
16 pay me for it, anybody for whatever use they want. And, so,  
17 I -- again, I question the panel, sort of what would that  
18 look like, how would you effectively do that, especially in  
19 the fast-flowing environment that this is.

20 MS. DIXON: Right.

21 MS. BROWN: And I would like to introduce the  
22 notion of mobile technology to the extent a lot of lead  
23 generation is occurring on mobile devices, i.e., limited  
24 screen real estate. You know, I think it was raised on an  
25 earlier panel, are disclosures effective? Do they cure

1 deception such that, as Jonathan was saying, consumers have a  
2 specific expectation about what's happening to their  
3 information.

4 MS. DIXON: I don't think that -- we can't lay all  
5 of this on disclosure. We can't. Disclosure is really  
6 important, but we cannot expect a consumer to make all of  
7 these choices correctly every single time without sounding  
8 like, you know, Nanny state. We do have to anticipate where  
9 this fails and figure out where the great harms are.

10 And this is not a black-and-white situation.  
11 There's a lot of gray here. There should be a continuum of  
12 responses, not just one or two. And it's always easy on a  
13 panel to say, yes, we need to do this, but the truth is is  
14 when the rubber meets the road, there's a lot of different  
15 situations. So, we're going to have to find a way that  
16 provides adequate notice but at the same time protects the  
17 use of that information and penalizes bad actors when they  
18 take in information and use it in unexpected an unwanted  
19 ways.

20 MS. BROWN: Yes, Ed.

21 MR. MIERZWINSKI: Just a couple of quick points.  
22 My friends at Epic used to have a button. I don't know if  
23 they still have it. Epic.org, the privacy group, and the  
24 button said, "notice is not enough." And that's -- they had  
25 that button 20 years ago. I think it's even worse on a

1 phone. It's just -- there's not enough real estate. You're  
2 exactly right. And the disclosures are happening in  
3 realtime.

4 But the other quick point I'll make about mobile, I  
5 think that the switch to the mobile marketplace, I hate to  
6 say that, but the mobile world, I'll say, because I don't  
7 want consumers to just be buyers; I want them to be citizens  
8 and everything else that they can be. But the use of mobile  
9 ads locational information, which I think is a quantum leap  
10 above the other information that companies have already been  
11 collecting, and we're still not sure how much of a -- anyway,  
12 more work needs to be done to study by layering locational  
13 information on top of all the other information that's being  
14 collected and used, not only by lead generators but by  
15 publishers and apps and everybody else. When is the  
16 consumer's interest being protected? I just think mobile is  
17 a whole 'nother problem.

18 MS. BROWN: Anyone else want to speak to that?

19 Okay, I'm going to use that opportunity to move on  
20 to make sure we have a broad coverage of topics. I'd like to  
21 talk a little bit now about unfairness specifically. I want  
22 to make sure we get that in because it's an area in which the  
23 FTC has been somewhat active recently.

24 So, the question I have for the panel is under what  
25 circumstances should lead generators and sellers be liable

1 for the practices of their buyers and their potential misuse  
2 of consumer data? That is something that the FTC in very  
3 specific context has alleged is unfair in the past. Does  
4 that unfairness extend in other ways? Perhaps I will turn it  
5 to Pam to start.

6 MS. DIXON: Oh, I have something else on my mind,  
7 so do you mind --

8 MS. BROWN: Sure.

9 MS. DIXON: Okay.

10 MS. BROWN: I'll let you say what's on your mind.

11 MS. DIXON: I still really have a problem with how  
12 some sensitive pieces of information are used to make  
13 decisions about consumers that if they were in other  
14 circumstances would be regulated, but in the lead generation  
15 space they are not. They, nevertheless, still have the very,  
16 very close impact of having a deleterious profiling effect on  
17 consumers in some cases. This is not across the board, but  
18 it is too pervasive to ignore.

19 So, I'm really concerned about that. It is a gap  
20 in all of the regulation. So, if you have an unregulated  
21 situation and there is a fundamental unfairness there, there  
22 has to be something done about it. Right now, if there's a  
23 consumer who lives in the wrong zip code and combines that  
24 with the wrong gender or, you know, national origin, how do  
25 we police or should we police the opportunities that consumer

1 sees? That's a very, very sticky, tough question.

2 I don't have the answers, other than to say that we  
3 have to take a long, hard look at that. We have to have a  
4 much more meaningful and serious and consequential public  
5 dialogue about that and come to some conclusions. While the  
6 existing laws leave that gap, I don't know that it should be  
7 left. I do think we need to address it. It's a fundamental  
8 unfairness.

9 MS. BROWN: Marty?

10 MR. COLLINS: Maybe I can just touch on yours and  
11 Pam's at the same time. Again, we have multiple verticals  
12 and multiple rays of regulations, so social media marketing  
13 and search marketing give you an ethnicity knob. They give  
14 you a gender knob. You can turn that knob if you're selling  
15 shoes. You cannot turn that knob if you're selling loans, or  
16 at least not mortgages.

17 So, I think the thing to remember is that -- so,  
18 unfairness, hallmark, FTC, got it. And people not seeing ads  
19 that maybe they would otherwise see, got it. But in the  
20 regulated spaces, it's -- I would submit to you that it's  
21 clear to regulated clients what knobs they can and can't  
22 turn. And that's going to vary by industry, and, again, it's  
23 going to vary by geography.

24 MS. DIXON: I don't think that those knobs are  
25 always being turned.

1           MR. COLLINS: Good. Well, in many cases, it's  
2 illegal to turn them.

3           MS. BROWN: And do we think consumers are aware  
4 that knobs can be turned?

5           MS. DIXON: I don't know about that. I think lead  
6 generators are in a space apart. I mean, they -- if you are  
7 just seeing an ad for a product, you are not applying for a  
8 firm offer of credit or for a home loan. And, so, ergo, I  
9 mean, the regulation does not apply the same way. So, I do  
10 think that there is a very subtle but important gap there.

11          MR. COLLINS: Well, I would just tell you, having  
12 highly regulated lending clients and running campaigns for  
13 them, including click campaigns, there's no confusion about  
14 which knobs you can and can't turn. You can't cleanse a  
15 violation by giving it to an agent. The law doesn't work  
16 like that. And commerce definitely doesn't work like that.  
17 You have to remember, in the regulated space, these laws are  
18 great and overlapping and we're happy to comply with them,  
19 but there's also this thing called headline risk.

20           And whether or not it complies with the law, if  
21 it's even close to the edge and you're in these regulated  
22 spaces or spaces that have, you know, well, people that  
23 publish and are not huge fans of the space, if you're -- you  
24 know, I think Jon made that point earlier. If you get close  
25 to some line that's going to cause a headline, you're not

1 going to touch that knob. And you can't ask me or anybody  
2 else to touch it for you.

3 MS. BROWN: I'm curious to hear from the panel  
4 about whether or not they think there should be  
5 responsibility on a buyer's part for vetting what's being  
6 said upstream that was used to bring leads into them, as well  
7 as vetting on the part of sellers as to what's going on  
8 downstream with the leads that they're selling. I'd like  
9 Jonathan to start.

10 MR. POMPAN: Sandy, I mean, I can touch this. You  
11 know, from the standpoint of wearing a compliance hat, you  
12 know, we regularly are working with folks that are trying to  
13 structure compliance programs because they're going to be  
14 purchasing, working with advertisers that have lead  
15 generation flow and have, therefore, a need to impose their  
16 service-level requirements downstream.

17 And I'm sure that, you know, there's no secret,  
18 there's a big push amongst many government agencies, in  
19 Washington and elsewhere, to encourage buyers to have very  
20 strong vendor management programs. And those vendor  
21 management programs are up and running at very large lenders  
22 and in other verticals, where the reality is is that if  
23 you're in the space doing the advertising work on the  
24 advertising side, you may be visited, you may be audited,  
25 monitored, not just by these software services, but by the

1 actual companies themselves that are purchasing.

2 And, so, there is a big effort in that regard, and  
3 it's happening at a company level; it's also happening by  
4 government agencies such as, for instance, the Consumer  
5 Financial Protection Bureau when they do examinations; the  
6 second module in their exam manuals oftentimes is advertising  
7 and lead generation. So, it is happening at a very high  
8 level and very robust level of security and particularly in  
9 the consumer financial services space, but also in other  
10 spaces.

11 MR. MIERZWINSKI: I would say on that one Jonathan  
12 and I actually agree, and I think that the liability has to  
13 go both ways. I think that companies that are selling  
14 information need to audit the companies that are buying  
15 information. There needs to be strong supply chain  
16 management. The ultimate seller to a consumer needs to know  
17 that he's not buying toxic toys from China, which is another  
18 issue my organization works on. And the same thing in all of  
19 these verticals, as well.

20 MR. POMPAN: And I just agree. And that's our  
21 existence already today. I mean, whether that exists as a  
22 matter of law -- we talked a little bit about it. It's not  
23 something you can disclaim as a matter of contract. You've  
24 got -- you have responsibility when you gather information,  
25 and you've got responsibility of who you hand it off to.

1 That's just the way it works.

2 MS. BROWN: That sort of segues -- and I'm going to  
3 ask a question, and, Michael, you can just ignore the  
4 question and say whatever you were going to say or answer my  
5 question.

6 The question I would like to ask is whether or not  
7 our panelists think a company can contract around liability.  
8 So, for example, I'm a lead purchaser; is it sufficient for  
9 me to put into a contract with whatever entity I'm buying  
10 leads from to say, well, you're not allowed to use deception  
11 or misrepresentations when you get these leads? And, so,  
12 once that's in the contract, I don't have to worry about  
13 whether or not there was actual deception or  
14 misrepresentations that occurred.

15 MR. COLLINS: Are you regulated? Like, do you have  
16 a website? I mean, just -- you could write that. I mean, I  
17 think Nathan referred to earlier these clients that are out-  
18 negotiated by the intermediaries. But, I mean, the reality  
19 is you have that liability. You can attempt to disclaim it,  
20 but if your brand -- you know, something that David was  
21 talking about earlier -- if your brand is affiliated with,  
22 not part of the stream, but adjacent to a stream of bad  
23 activity, that has consequences. That has consequences to  
24 your market cap. That's not \$1,000 a phone call.

25 So, I think you have that. You can put things in

1 the contracts, but when the regulators come to the GC's  
2 office, you can't pull out the contracts and say I disclaimed  
3 responsibility. That works for search engines, but it  
4 doesn't really work in our part of the market.

5

6 MS. BROWN: Does anyone else have thoughts on that?

7 MR. MIERZWINSKI: Disclaimers are not enough  
8 either.

9 MR. POMPAN: I'd just note that there's a big  
10 difference between contractual negotiations about contractual  
11 liability between private parties and liability with respect  
12 to government and laws and regulations. So, there's a high  
13 degree of difference. Oftentimes, the two don't meet.  
14 Contracts are negotiated by procurement offices looking to  
15 insulate companies from indemnity and reps and warranty risk,  
16 and government risk is compliance.

17 MS. BROWN: Michael, I want to return to you. I  
18 know you had a comment.

19 MR. WALLER: Well, I wanted to -- this is related  
20 to that, of course, but talk about the responsibility for  
21 vetting. It's just my view, but, yeah, I think that you are  
22 responsible for vetting your buyers and also the people  
23 you're buying from because often there's a lot of -- we've  
24 seen very sloppy or no vetting. There's often a lot of  
25 information that's easily available, inexpensive to do some

1 basic vetting.

2           And, again, the trouble here is that the data is so  
3 potentially toxic and dangerous. So much can be done with  
4 it. So, we're talking a lot about sort of the -- what folks  
5 are calling the regulator, the responsible parties, but, you  
6 know, there's a lot of danger with the irresponsible ones,  
7 and they're getting that information from somewhere, and it's  
8 not a secret, you know, secret network of evildoers. The  
9 information is coming from all kinds of different sources and  
10 getting to them. And, so, responsible players are likely in  
11 the chain.

12           And here's why I'll say that that's probably true,  
13 because as we heard before, the publishers, there are  
14 thousands and thousands and thousands of publishers who are  
15 sending their data up the chain. It's going through many  
16 data brokers. Data brokers sell to each other and back and  
17 forth. So, when a buyer gets that remnant lead, for example,  
18 they likely have no idea where it came from. In fact, it  
19 will be impossible for them to ever find out where it came  
20 from.

21           So, this idea of vetting is just the tip of the  
22 iceberg in terms of, you know, providing some protection for  
23 the consumers, because, also as a related topic we talked  
24 about earlier, is once you've got the data you're going to  
25 want to do something with it. And I don't know how we

1 address that. I mean, people might suggest things like  
2 taxing data so that there's a disincentive to hold onto it,  
3 some kind of elaborate tracking mechanism like they use with,  
4 you know, certain chemicals and pharmaceuticals, but the idea  
5 is that there is this pressure that the business is feeling  
6 to do something to monetize that data, and that's a big  
7 problem in my view.

8 MS. DIXON: I really agree with that. And I  
9 just -- despite regulation, not all companies are acting  
10 correctly. And a lot of times it's the companies who are,  
11 you know, smaller, don't have good legal representation, and  
12 they're doing all sorts of wild west things with the data,  
13 and they may not be correctly turning the knobs, as it were.

14 MS. BROWN: So, I'm going to -- I know we haven't  
15 left a ton of time for it. We have a few minutes, and so I'm  
16 going to pick a question that I hope will give everyone an  
17 opportunity to kind of take their angle at it. So, we've  
18 heard both on this panel and other panels that everyone is  
19 sort of yearning for guidance. Guidance, how do we do it  
20 right, guidance? So, what kind of -- you know, I know I  
21 think an earlier panel asked the question of what kind of law  
22 or regulation, I think that gives people some nervousness  
23 sometimes, but what kind of guidance and in what areas, on  
24 what specific types of practices would you think it would be  
25 helpful to provide guidance?

1           MR. MIERZWINSKI: Well, I know we're running out of  
2 time, so I'll be very brief, but I also want to plug in an  
3 ad. I appreciate Marty's comments on my work. I've got a  
4 couple of copies of one of my reports here if anybody wants  
5 them, but I wanted to, especially for our viewing audience,  
6 encourage people to read books by Frank Pasquale, The Black  
7 Box Society, and Joe Turow, T U R O W, The Daily You, which  
8 are books that talk about the real impact of these practices  
9 on consumers.

10           But the short answer now to the question is the  
11 Fair Credit Reporting Act is based on the fair information  
12 practices. A similar law should be extended to data brokers  
13 and lead generators and the rest of the internet.

14           MS. BROWN: Thanks. Pam, Jonathan, do you have --

15           MR. POMPAN: I think what's important is to take  
16 into account the vertical-specific regulation that already  
17 exists and the self-regulatory programs that exist in best  
18 practices guidelines that trade associations have in all of  
19 these different verticals. You know, there's a very big  
20 difference between home services and mortgage lending. And  
21 the mortgage lending space is extremely regulated from both  
22 the federal government, state, local, et cetera.

23           You have situations there that are unique to that  
24 space, and there's unique business practices. You also heard  
25 today about practices in the education space, which, again,

1 are very different than the lending space. So, I think  
2 ultimately the type of education and work that the Commission  
3 can do is to collect all of that information and understand  
4 it on a vertical-specific basis, rather than do the broad-  
5 brush-stroke approach.

6 MS. BROWN: Thanks, Jonathan. Pam?

7 MS. DIXON: I do agree with that. I would also say  
8 the work that we did in the Scoring of America report is  
9 really important to consider because there's a lot of data  
10 flow that gets combined and is used to create scores about  
11 consumers that puts them into boxes, that puts them into a  
12 lead generation space that just simply may limit their  
13 possibilities in life, not always, but certainly some of the  
14 time. So, I would encourage work in that area. And, again,  
15 on the fraud area, I think it's very important.

16 MS. BROWN: Thanks, Pam. Michael and Marty?

17 MR. WALLER: You go ahead, Marty. We're out of  
18 time, so you can --

19 MR. COLLINS: I mean, as industry involved, and we  
20 think the FTC's been clear, we'll continue to help people  
21 comply.

22 MR. WALLER: And, I mean, obviously, just as an  
23 individual, like a lawyer working on these things, guidance  
24 is always helpful. It's a good place to start. And there's  
25 certainly -- the more information, the more that we talk

1 about it, I think the more -- it's possible that a consensus  
2 might emerge on how we might -- we might-- the kind of  
3 guidance we might offer.

4 MS. BROWN: Thank you. I think that was a very  
5 fitting closing to our panel. I really appreciate everyone's  
6 time, and I will now call on our final group of panelists in  
7 the Looking Ahead Panel, Panel Number 5, to come up here and  
8 join us.

9 (Applause.)

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1 PANEL 5: LOOKING AHEAD -- PROTECTING AND EDUCATING CONSUMERS

2 MS. MITHAL: Good afternoon and welcome to the last  
3 panel of the day: Looking Ahead -- Protecting and Educating  
4 Consumers. I'm Malini Mithal, an Associate Director with the  
5 Division of Financial Practices at the Federal Trade  
6 Commission. And this is Patrick Eagan-Van Meter. He's a  
7 Financial Technology Program Specialist, also in the Division  
8 of Financial Practices.

9 Before Patrick introduces everyone else, I just  
10 wanted to tell you briefly what our panel is about. This  
11 panel will focus on the steps both industry members and  
12 regulators can take to better protect consumers and  
13 information strategies for improving consumer understanding  
14 of lead generation and avoiding problematic practices.

15 So, with that, I will turn it over to Patrick.

16 MR. EAGAN-VAN METER: Thank you. And we have a few  
17 more -- you know, this is a bigger, fuller table than we've  
18 had so far today, but we're going to try and make sure to  
19 call on everybody so that everybody has their time. But  
20 we're going to start with Joseph Chambers. If you could just  
21 introduce yourself briefly.

22 MR. CHAMBERS: Joseph Chambers. I'm an Assistant  
23 Attorney General with the Connecticut Office of the Attorney  
24 General. I represent Attorney General George Jepsen on  
25 multistate investigations, including I worked on the national

1 mortgage settlement and am working on the subsequent mortgage  
2 servicing settlements. I worked on a recent credit card  
3 collection settlement; I worked on debt buyer investigations;  
4 cases dealing with various scams related to debt relief; and  
5 now I'm working on an ongoing multistate investigation of  
6 for-profit schools.

7 MR. EAGAN-VAN METER: Thank you. And Kim Taylor.

8 MS. TAYLOR: My name is Kim Taylor. I'm the CEO of  
9 Ranku. We're a technology startup in Seattle backed by  
10 Microsoft and Mark Cuban, and we help traditional nonprofit  
11 universities enroll more online degree students. So, we help  
12 them run their dot-edu and become more efficient. Before  
13 that, my background was in higher ed lead generation, so I  
14 worked on hundreds of schools, big for-profits, small schools  
15 just going online, and then all the major lead aggregators.

16 MR. EAGAN-VAN METER: Thank you. David Morgan?

17 MR. MORGAN: David Morgan. I'm the Chief Revenue  
18 Officer for PerformLine. We're a cloud-based marketing  
19 compliance monitoring, discovery, reporting and analytics  
20 platform. We work with clients to monitor their brand  
21 presence, both directly and through lead generators on the  
22 internet, as well as through contact center monitoring.

23 MR. EAGAN-VAN METER: Thank you. And Peter  
24 Marinello.

25 MR. MARINELLO: Yeah, hi, I'm Pete Marinello. I'm

1 a VP of the Council of Better Business Bureaus. First of  
2 all, thank you very much for the invitation to be on this  
3 panel. What a great morning/afternoon of terrific content  
4 and things to think about. I will say this, though. It's a  
5 little unsettling. I'm a Mets fan, I have a Kansas City  
6 Royal season-ticket-holder to my --

7 MR. GRAGG: Go Royals. Go Royals.

8 MR. MARINELLO: It's a -- you know, it's a little  
9 disconcerting at the moment, but that's okay. I just want to  
10 say, it is my great privilege to direct a self-regulatory  
11 program called the Electronic Retailing Self-Regulation  
12 Program. And it's this really great partnership between the  
13 trade association, the Electronic Retailing Association, who  
14 deals as the preeminent trade association for direct response  
15 marketers and the Council of Better Business Bureaus. And  
16 it's a really good example about how industry can be very  
17 responsive through self-regulation to address a lot of  
18 topical issues.

19 MR. EAGAN-VAN METER: Thank you. And, Lisa?

20 MS. MCGREEVY: Good morning and good afternoon,  
21 everybody. I'm Lisa McGreevy. I'm the President and CEO of  
22 the Online Lenders Alliance. And my principal job here is to  
23 talk to you about our best practices, which I'm very proud  
24 of. I'm the steward of these. These were developed by the  
25 industry, and I'm looking forward to having that

1 conversation.

2 And just to Peter's point, I think today has been  
3 incredibly informative, and I really want to thank the FTC  
4 for putting this program on and including us to be here  
5 today.

6 MR. GRAGG: Hi, I'm Gregory Gragg. I am CEO of  
7 Blue Chair. We own a variety of different companies in the  
8 lead gen space. We own not only lead-gen companies, but we  
9 also own compliance software, that's SAS software that goes  
10 out and hunts down violators. Someone said earlier that the  
11 internet can't be audited. It's untrue; it can be audited.  
12 We figured out how to do it, and we can track criminals down  
13 and stop them, and we've been doing it for the last three  
14 years.

15 We also own Gragg Advertising, which is a client-  
16 side aggregator. We protect the client; we protect the  
17 consumer. Our focus is on that. I was recently named  
18 Chairman of the Board for LeadsCouncil. We are retooling  
19 LeadsCouncil right now to give it a little more teeth in the  
20 space to make sure that we work with other organizations such  
21 as Lisa's to provide information to lead generators to make  
22 sure they understand good standards, good code of ethics,  
23 good practices in the space. We feel it's important as this  
24 space matures.

25 MS. MITHAL: Great. Okay, thank you so much. With

1 that, we'll get started with our questions. I just want to  
2 remind our presenters that if you want to answer a particular  
3 question, you can just turn your table tent up sideways,  
4 since we do have so many people on the panel.

5 Okay, so, let's start off with industry efforts.  
6 So, today, we've heard a lot about potential problems,  
7 consumer protection issues that can arise in the lead  
8 generation industry. So, let's talk a little bit about what  
9 some industry efforts have been to address these problems.  
10 And I can go ahead and start -- everyone is welcome to answer  
11 the question, but why don't I start with Peter.

12 MR. MARINELLO: Sure. You see my tent is up  
13 vertically now?

14 MS. MITHAL: Yes.

15 MR. MARINELLO: Theirs are horizontally. You know  
16 what, self-regulation really has been such kind of a vital  
17 part of the global economy through the years. You know,  
18 we've heard a lot about it this morning in higher education,  
19 in healthcare, in finance. You know, the private sector  
20 relies on a lot of different types of codes of conduct,  
21 whether they be ethical codes of conduct, best business  
22 practices, things like that. But you know what, no industry  
23 really has embraced self-regulation quite like the  
24 advertising industry. And it's kind of an interesting little  
25 backdrop, really quickly. You know, it started way back with

1 the great consumer advocate, Ralph Nader, who back in the  
2 late '60s, him and there was Nader's Raiders, actually were  
3 storming the steps of Capitol Hill, kind of yelling that, you  
4 know, that advertising had fallen into this great abyss and  
5 that the government lacked adequate resources to address some  
6 of the prevailing issues like price fixing, comparative  
7 advertising, bait and switch, stuff like that.

8 So, the advertising industry, the four main trade  
9 associations, the Council of Better Business Bureaus being  
10 one, kind of banded together and put together this really  
11 effective system of self-regulation to, again, address some  
12 of the prevailing issues of the day. And, you know, one of  
13 the really nice things that we've seen through the subsequent  
14 decades is that it's a very flexible and nimble system.

15 A few years later, we saw a self-regulatory  
16 mechanism set up to address children's advertising,  
17 advertising targeted to kids 12 years of age or younger. My  
18 program began in 2004 to address direct issues in the direct  
19 response advertising. Elaine Kolish, who used to work at the  
20 FTC enforcement division over here put together in 2007 this  
21 great program to address childhood obesity and nutrition  
22 claims.

23 Genie Barton put together this great accountability  
24 program to address -- to data collection and targeted  
25 advertising really and cross-platform data eligibility and

1 things like that. So, self-regulation is such a terrific  
2 alternative that businesses can work with, and it's been so  
3 effective through the years, yeah.

4 MS. MITHAL: Okay. Thank you, Peter. So, it  
5 sounds like you're a big fan of the idea of self-regulation.

6 Greg, do you have anything to add to that?

7 MR. GRAGG: Well, I think we've got to understand  
8 where lead gen came from. I mean, I've been in lead gen for  
9 25 years before it was lead gen. It was direct marketing  
10 before that. And, so, we've been creating leads for  
11 companies for three decades now. And, so, I think what we've  
12 seen is the industry evolve. I think in the beginning, in  
13 the '90s, we saw a lot of lead gen, and leads were being  
14 sent, and there were a lot of bad actors in the space.

15 What's happened recently is clients have gotten a  
16 lot smarter. They're using metrics; they're using analytics  
17 to figure out whether those leads are good leads or they're  
18 bad leads. They pay money for those leads, and if they don't  
19 convert into sales for those organizations, they eliminate  
20 that channel. And, so, I think consumers or buyers are doing  
21 a really good job of eliminating a lot of the bad actors that  
22 are out there.

23 In addition, there are products like IntegriShield,  
24 PerformLine, Omniangle, LeadiD, that came into the space in  
25 the 2000s that really focus on finding those bad actors and

1 eliminating those bad actors. I know that we spent an  
2 inordinate amount of time tracking criminals down and  
3 eliminating them from the system.

4 In just the last four to five years, we've  
5 eliminated over 100 vendors off of our buy list. We buy from  
6 over 200 vendors right now. They have to meet very stringent  
7 guidelines in terms of disclosure, in terms of following what  
8 we feel are good practices in the space that are generated  
9 from the FCC/FTC/CFPB/States Attorneys Generals. We're  
10 following those guidelines on a regular basis, and I can tell  
11 you right now the majority of the clients that are out there  
12 want to follow those guidelines, as well. They want to do  
13 the right thing.

14 In addition to that, we work with LeadsCouncil.  
15 LeadsCouncil, again, wants to be a centralized hub where  
16 people can get good standards, good ethics to follow in the  
17 space as it matures. And, so, I think in terms of  
18 benefitting the consumer, we're doing those things right now  
19 that are cleaning up and maturing the system, and the  
20 consumers are benefitting from it.

21 MS. MITHAL: Okay. And then Kim, and then I'll ask  
22 another question.

23 MS. TAYLOR: Okay. I think it's important to kind  
24 of take a step back. Obviously, the industry has taken --  
25 and I'm speaking on behalf of the education vertical. That's

1 kind of my domain expertise. The industry has taken great  
2 measures at self-regulation. I don't think it's working very  
3 well, and a lot of the self-regulation is protecting the  
4 vendors from each other and the fraudulent way that data  
5 could move between them or things that -- you know, things  
6 that weren't great. What I think got lost in self-regulation  
7 is we haven't yet heard anything about the consumer, like how  
8 are we self-regulating to protect the consumer, to make sure  
9 that they see the best options, the most transparent option,  
10 are they being matched to the best school.

11           Something interesting back when -- you know, back  
12 when Obama first got elected, one of the major issues in lead  
13 gen was everyone realized the search campaign, Obama wants  
14 single moms to go back to school would convert really high.  
15 It would convert and it had very high application rates and  
16 enrollment rates. And, so, we started seeing, you know, a  
17 lot of regulation around the types of things that you could  
18 say, the types of job outcomes that you could do, but it  
19 still, I don't think, was doing enough to protect consumers.  
20 And I don't -- and I think that's who we need to keep  
21 forefront of this conversation.

22           And I think a lot of the -- you know, a lot of the  
23 regulation has come from all these new ways that we can look  
24 at data, we can now verify it, we can score it, we can make  
25 sure it's compliant, we make sure that it's coming from the

1 channel that the -- you know, that that vendor said it was  
2 coming from. And that's all great, but like I said, it goes  
3 -- to me, that just goes back to protecting the vendors from  
4 each other, and I think we should focus more on the consumer.

5 MS. MITHAL: Okay. So, I wanted to ask Lisa,  
6 actually in particular, this question, since I know OLA has  
7 codes of conduct. Could you talk a little bit about that,  
8 Lisa?

9 MS. MCGREEVY: Sure. Thank you so much for having  
10 us here. I think you're exactly right -- it all starts with  
11 the consumer, because at the end of the day, everybody in our  
12 space wants to ensure that the customer has the best possible  
13 experience. And, so, our code of conduct starts with  
14 treating consumers with -- treating consumers fairly and with  
15 respect. And it starts at the top, and then we go through 50  
16 pages of all kinds of things related to overarching  
17 guidelines, advertising and marketing, application and  
18 origination, and it goes on and on and on, particularly  
19 focused on mobile best practices, as well as security of  
20 information.

21 And I think at the end of the day it works in our  
22 industry really well because we are self-policing. And we're  
23 self-policing on behalf of the consumer. Any bad consumer  
24 experience reflects poorly on everybody in our industry, and  
25 I am really proud of the members of the Online Lenders

1 Alliance who have come together for the last 10 years to  
2 ensure that we have a vibrant industry, because at the end of  
3 the day, any affiliate or sub-publisher or whatever you want  
4 to call them who puts a black mark on our industry puts a  
5 black mark on everybody. And we all accept that  
6 responsibility.

7 A big tenet of our best practices is the self-  
8 policing. It's up and down the chain, which was talked about  
9 on the last panel. Everybody that our members do business  
10 with must comply with our best practices; whether you're a  
11 member of the association or not, by contract and by constant  
12 verification and monitoring, you have to comply with best  
13 practices, and we have a very strong policing effort.

14 When we find somebody out there who's doing  
15 something that's not right, we go after them, and we go after  
16 them as an industry. We work with each other; we do mystery  
17 shopping. If we don't -- if I don't know who somebody is and  
18 I get a complaint, I put it out there to our members, and we  
19 find those people, and we stop them.

20 MS. MITHAL: Okay. So, it sounds like mystery  
21 shopping, that's one of the ways that you identify  
22 violations. What are other ways that you would identify  
23 violations of any kind of codes of conduct?

24 MS. MCGREEVY: So, we find violations through our  
25 members, saying, hey, we saw this website out there because

1 we have a very active seeding program. Our members seed  
2 sites because we want to know where customer data goes. We  
3 want to follow the trail. And, so, in fact, I'm working on  
4 one right now where somebody made a complaint; there is a  
5 site out there that's got some stuff on it that's not right,  
6 and we're in the process of trying to get them to correct  
7 that.

8 I think that's the most effective thing that can be  
9 done is for members -- people who are in the industry looking  
10 and policing themselves to identify things that aren't right  
11 and then try to get them corrected.

12 MR. EAGAN-VAN METER: And then one last thing for  
13 Lisa, and then we'll move on to David. So, when you talk  
14 about, I guess, either stopping somebody or getting somebody  
15 to correct the disclosures, what -- to what -- what makes  
16 your decision in terms of which path you're going to take  
17 with, you know, a particular bad actor?

18 MS. MCGREEVY: So, we have a laid-out published set  
19 of how the process and procedure works and how the complaint  
20 process works. And it turns out that because people really  
21 want to be successful businesspeople, they don't want their  
22 name put out there as a bad actor. And that's what's really  
23 effective at keeping the industry going, because they know  
24 that I can publish their name in my newsletter. And people  
25 say to me, oh, why would you do that? You're going to take

1 on legal risk. I'm like, whatever, go ahead, sue me, I don't  
2 really care. If you're doing something bad, I'm going to put  
3 you out there.

4 And what we've found over the last number of years  
5 as we've done the self-policing is that most people when  
6 they've done something on their websites that isn't right,  
7 they're happy to know that it's wrong and they want to  
8 correct it, because they really don't want the FTC or the  
9 CFPB or a state attorney general knocking on their door. So,  
10 that's the goal of trying to set a high standard and then  
11 trying to help everybody meet that standard.

12 MS. MITHAL: And David?

13 MR. MORGAN: I was just going to say it's a big  
14 challenge because, you know, when you try to set up self-  
15 regulation in highly competitive markets there's a lot of --  
16 there's a lot at stake. People aren't making tens of  
17 thousands of dollars or millions of dollars; people are  
18 making hundreds of millions and billions of dollars. So,  
19 getting a -- kudos to the OLA for having done it, because  
20 getting companies that are making billions of dollars in a  
21 room and to basically say how they do business and which  
22 parts of it they're willing to potentially pull back on that  
23 may be highly profitable for them so that they'll agree on  
24 some basic tenets for a program, again, kudos to you because  
25 I've also seen all those people sit in rooms for potentially

1 years and not even agree on 10 bullet points.

2 So, strong regulation in the space and strong  
3 enforcement and strong action and the threat of strong and  
4 evenly enforced penalties is probably the best way you can  
5 motivate people toward self-regulation. I think that there  
6 are obviously, the way Lisa just described, putting items out  
7 there to let people know who the bad actors are; the CFPB has  
8 taken the step in this direction with the CFPB consumer  
9 complaint data base. Right, so if you're a consumer and  
10 you're having a bad issue with someone, go on CFPB.gov and  
11 you can very easily find their complaint data base.

12 Well, you can also look at the entire complaint  
13 data base. So, we did a study that we just announced  
14 Tuesday, and as of the end of September, there are 464,000  
15 complaints in the CFPB complaint data base. They started  
16 aggregating those complaints back in 2011, and we did an  
17 analysis to see what the aggregation points or connective  
18 tissue were between the number of complaints you would get  
19 and the probability of getting fined and what your average  
20 fine size would be.

21 So, if you're a company that's a big brand, it's  
22 worth taking a look at. If you have less than 2,000  
23 complaints, your likelihood of getting a fine is 6 percent,  
24 and the average fine is \$60 million. If you get over 2,000  
25 complaints in that data base, your probability of getting

1        fined is 58 percent, and the average fine is \$134 million.

2                If you have over 10,000 complaints in that data  
3 base, your likelihood of getting fined is 60 percent, and the  
4 average fine is \$758 million. So, when you look at the value  
5 chain of how you receive leads, who your marketing partners  
6 are, the size company you are, the reach you have, the number  
7 of consumers you have and what your trajectory is looking  
8 forward, keep some of those numbers in mind.

9                And also if you're a new company or a startup or in  
10 the disruptive financial space or things of that nature and  
11 you haven't been around for that many years, you should be  
12 looking at that complaint data base and see how you or the  
13 clients that you work with are trending and know whether  
14 you're approaching a run rate that would get you there very  
15 quickly, because I don't know very many companies where they  
16 can just take \$134 million out of the general fund and be  
17 really okay with it.

18                MS. MITHAL: Great. And then Greg, and then we'll  
19 go to Joseph.

20                MR. GRAGG: Well, applauding Lisa again, she's done  
21 a great job. Do I think it's far enough? No. I think that  
22 you have to use technology to your side. I think you need to  
23 go on the offensive and not the defensive and not wait for  
24 people within the industry to complain. We've done so.  
25 We're aggressively going after people and searching and

1 spidering the internet for our clients to find violators.  
2 They're hard to find. We're cutting through 2,000 violations  
3 a week with a remediation rate of 90 percent. And, so, there  
4 are bad actors out there. Are we trying to limit them? Yes.

5 Most of the violations we find out there, 60  
6 percent of the violations, are the clients themselves. They  
7 built URLs or they have 400, 500 URLs out there and they  
8 forget that they're out there. They get out of compliance.  
9 They don't even remember that they're there. And, so, we  
10 correct the data on those landing pages, the information on  
11 those landing pages. And that's in 60 percent of the cases.

12 Another 15 percent is offshore, and we can't touch  
13 offshore. I can't do anything about anybody in Russia. I  
14 can't do anything about anybody in South America right now  
15 and go after those people. The rest of the statistics that  
16 are there, the 25 percent are people who are trying to game  
17 the system. And then we work to send them cease-and-desist,  
18 to make sure that they're not taking advantage of the  
19 consumer, number one, and not taking advantage of the client,  
20 number two, which is very important, again, as this space  
21 matures.

22 MS. MITHAL: Joseph?

23 MR. CHAMBERS: Just a comment, and a question for  
24 my fellow panelists. It seems from what we've heard today  
25 that a lot of the reputational risk and the regulatory risk

1 that is inherent in purchasing leads really comes from or  
2 arises from the stream, right, that there are several layers  
3 of affiliate. And in thinking about what sorts of components  
4 should be in a code of conduct, some panelists have mentioned  
5 auditing on the up front before you engage with a particular  
6 vendor, monitoring on the back end to know what the vendors  
7 are doing, contractual terms, but what -- what opportunity is  
8 there to enshrine a protocol for adverse action, right,  
9 against the lead generators who engage in bad practices? And  
10 what about including restrictions on the sale or the way that  
11 the different affiliates interact and to somehow restrict  
12 that stream?

13 If that's where the risk comes from, it seems that  
14 that's where the code of conduct or the best practices should  
15 be addressed.

16 MR. MORGAN: I think in many discussions that I've  
17 seen, and before I worked for PerformLine I worked in the  
18 lead generation space for 12 years and sold -- bought  
19 hundreds of millions of dollars of leads and have both felt  
20 the direct impact of bad actors and also been a regulated  
21 entity ourselves when we did mortgage lead generation and had  
22 23 mortgage banking licenses.

23 So, I think the issues are -- there has been a lot  
24 of discussion about -- you would hear the conversation about  
25 N-plus-one or N-plus-two, like how many layers below a direct

1 relationship is acceptable, but it was always looked at as an  
2 approach of risk mitigation because there was little  
3 technology out there, but for every discussion that we seem  
4 to have like that, there was someone else who would game it  
5 or there was another way of hiding sub-affiliate codes so  
6 that it would still get passed along.

7 I will say that in lieu of self-regulation a lot of  
8 the companies that we have the privilege to have as clients  
9 are really taking a more aggressive stance towards monitoring  
10 and enforcement of their own marketing practices than is even  
11 required by the law because not only does the law probably  
12 not go far enough, it's not really specific. The ambiguity  
13 of it doesn't really help the marketplace. Adding  
14 disclaimers, I refinanced my house; 200 pages of clear and  
15 conspicuous disclaimers didn't really help me much.

16 So, when you're looking at that, I mean, Greg has  
17 some great sets there. I mean, we alone, just for our  
18 clients, do 50 million data observations a day, just trying  
19 to keep things in check, and not just monitoring the things  
20 that fail or are violations but monitoring the things that  
21 pass and having that audit trail, too.

22 So, when you think about that, having those  
23 penalties for folks, pushing the bad actors out, is  
24 definitely something that has to be done, but there's also  
25 other things to consider, too, like how -- when we talk about

1 data and flushing data or getting rid of data and the data  
2 that passes through hands has been a common theme today.  
3 Well, there's also other laws that say you have to hold on to  
4 to business records. Right, so if I sell this data to you  
5 and I'm held by the statute of limitations, and you're  
6 telling me to flush it, and I'm thinking I need to hold it  
7 for seven years, what do I do.

8 MR. MARINELLO: You know, I just want to jump in,  
9 because, you know, we've talked a lot, not just this panel  
10 about self-regulation, we've heard about it all morning. You  
11 know something, if self-regulation, if it's done for purely  
12 cosmetic reasons, if it's done to protect, you know, a  
13 company or an industry as a whole, it's not going to work.  
14 You know what, there are a couple of real significant  
15 hallmarks to what makes a good self-regulatory program. You  
16 know, there's a perception out there is the fox watching the  
17 henhouse is the old kind of cliché, but there are a couple of  
18 things that I can tell you will make a good self-regulation  
19 program. There's got to be the transparency piece, and we've  
20 heard about transparency. It's another word we heard all  
21 day. Every panel talks about transparency, okay?

22 But transparency and self-regulation means telling  
23 the public what you're doing, okay? Communicating the  
24 activity of the self-regulatory mechanism. The credibility  
25 piece is also another significant factor. Having an outside

1 independent forum, certainly in the eyes of the public,  
2 brings some credibility to a good self-regulatory system.  
3 Accountability, okay. What happens if somebody doesn't  
4 participate in a self-regulatory mechanism? What happens? I  
5 know what happens in our program. We report it and we send  
6 it to the government so they know that somebody's not willing  
7 to participate in self-regulation.

8           And, finally, there's got to be some objective  
9 standard of review. You know, I've looked at OLA's code of  
10 ethics. It's this fabulous 80-page document. It's so  
11 comprehensive, it's so thorough, okay? With us, it's about  
12 communicating claims truthfully and accuracy and making sure  
13 that advertisers have a reasonable basis, okay, for the  
14 claims that they're communicating.

15           And, so, those are the critical elements, and, Kim,  
16 it breaks my heart when I hear self-regulation doesn't work  
17 in a particular segment, but I can help you out.

18           MS. MCGREEVY: And I would just like to say that  
19 the self-regulation program and the codes of conduct where  
20 industries come together is part of a larger partnership with  
21 the government. And it isn't effective if there isn't a  
22 government and a private sector effort together. We have  
23 been so grateful for the work that the FTC has done on things  
24 like phantom debt collectors. You know, we went out and  
25 hired Louie Freeh and his firm to try to help us figure out

1 this problem when it really hit five years ago. And we spent  
2 a lot of money and a lot of time, and so did they, and they  
3 came back to us and said, you know, it's kind of like the  
4 Nigerian bank scams that have been going on for 30 years.  
5 Like, really? How in the world could those still go on?

6 The fact of the matter is there are fraudsters out  
7 there, and they're really smart. Look at how they've  
8 infiltrated OPM and some of these healthcare companies,  
9 stealing information. But it's got to be a partnership  
10 between the government and the private sector to do the best  
11 job that we can for the customer, not for companies, but for  
12 the customers.

13 MS. MITHAL: And, by the way, since Joseph brought  
14 it up, is there any existing self-regulatory code of conduct  
15 where there is a prohibition on the sale of information to  
16 certain companies? I think we've talked a lot about people  
17 having these codes of conduct, but, you know, in terms of  
18 drilling down onto what the codes of conduct actually say, is  
19 there anything about restricting the sale of data? And did  
20 you want to answer that or another question, Greg?

21 Go ahead, Lisa.

22 MS. MCGREEVY: I'll say that the whole data -- the  
23 whole data effort is something that continues to be a  
24 struggle for everybody, right, because you're trying to  
25 balance the needs of your customers who want speed and

1 convenience, who come to you because they're looking for  
2 products and services. You need to balance that with the  
3 privacy concerns and how data is used.

4 Our code of conduct and our best practices are a  
5 living document. Glenn mentioned earlier that we had a  
6 regular review last month, and we took a new step and, as of  
7 January 1, no member of the Online Lenders Alliance, any of  
8 the vendors, anybody who participates in our association,  
9 will be able to sell, pass, whatever word you want to use,  
10 Social Security information or bank account information for  
11 any purpose other than for a loan.

12 Now, that's the standard that people in our  
13 industry already comply with, but we've gone ahead and put it  
14 now into writing in our best practices. We also in order to  
15 enforce those kinds of things, we continue to have  
16 discussions about, you know, where is it, how is it  
17 appropriate that we let customers know what's happening. So,  
18 it's an ongoing discussion, and I think with the passage of  
19 ROSCA, and other measures and discussions like this raise the  
20 awareness of the importance of keeping people's data secure,  
21 and we have a whole lot of security measures in our best  
22 practices. And it's something that we all ought to continue  
23 to talk about.

24 MS. MITHAL: Okay. And then, Greg, I want to  
25 return to the thought you had earlier.

1           MR. GRAGG: Well, I'm going to jump on that. I  
2 think, again, in the lead-gen space there's never been a  
3 centralized hub and never standards, never a code of ethics  
4 that centralized. Lisa's done a great job creating it for  
5 the OLA, but is it in the mortgage space, is it in the  
6 education space, is it in the retirement home space, is it in  
7 the funeral space?

8           I mean, these are all categories that generate  
9 inquiries and drive traffic. It's not there. And that's why  
10 I got involved in LeadsCouncil and we're trying to retool it.  
11 We do need a centralized hub, and beyond that, we do need to  
12 work with third-party auditors to figure out, hey, the fox is  
13 not guarding the henhouse here. We do want that type of  
14 scrutiny or the good providers do. They do want that type of  
15 scrutiny out there.

16           And, so, I agree with both of what you guys are  
17 doing, but I believe at the end of the day, and I believe  
18 it's going to happen through LeadsCouncil, we need one  
19 centralized place where all of this data resides, where  
20 everyone can come and get these standards and get these code  
21 of ethics and utilize them and build their own programs  
22 within their own verticals.

23           MR. EAGAN-VAN METER: All right. And if we can  
24 take a couple minutes now to talk about some of the  
25 technological solutions that are kind of starting to come to

1 the forefront as ways to deal with problems in the lead-gen  
2 industry. I know that some of them have already been  
3 mentioned today, but I guess if we could start with David and  
4 then Greg.

5 MR. MORGAN: Sure. So, I won't go back over some  
6 of the ground that we've covered already, but to pick up on  
7 what I said earlier and something that Greg reinforced, too,  
8 is you cannot throw people at this. This is not a people-  
9 based solution. The depth and breadth of the internet,  
10 whether it's direct advertising that you do or advertising  
11 that you partner with either massive agencies like WPP or  
12 OmniComm-type agencies or direct marketing agencies, your  
13 reach can be very broad and very big, and that's good.

14 This is a free market economy. You should be able  
15 to get your message and value proposition out to folks, but  
16 ensuring that you're doing it in a way that is clear and  
17 there's fair balance of information and there's truth in  
18 there and you're not trying to deceive folks is very  
19 critical.

20 If you intend to deceive folks in the beginning,  
21 it's not a good premise for business. So, technologies do  
22 exist to be able to go out there and not only find things  
23 that are bad but also reinforce and reconfirm and re-audit  
24 the things past and are monitored on a daily basis, and then  
25 also using technology to track all the items that are

1 identified so that you can have reporting on issues from when  
2 they're identified all the way through to when they're closed  
3 and whether that occurs on a website, on your website,  
4 someone else's website, whether it's click-based traffic,  
5 contact-center based traffic, your own contact center,  
6 someone else's contact center, all of that technology exists  
7 right now.

8           We've built a platform that does all of that, and I  
9 will say that some of the discussion today has been about --  
10 well, a lot of it's been about lead generation, but a lot of  
11 what the direct advertisers do also has caused a lot of  
12 questions.

13           So, when you're looking at the marketing and the  
14 outreach that others do for you, it is very important that  
15 that finger not only point out but that finger point back,  
16 too, and that you judge your own marketing and the efforts  
17 that are done by you yourself as an advertiser in all of your  
18 channels under the same standards. A lot of what has really  
19 caused massive fines and massive consumer harm in the space  
20 has been lead generation activity coupled with very  
21 aggressive, much, much larger engines on the -- for  
22 conversion on the part of -- on the part of actual brands out  
23 there. So, there's a lot of technology that can be  
24 leveraged. The best companies are looking at it to do it and  
25 get ahead of the regulations, so, I'm not sure if you agree,

1 Greg.

2 MR. GRAGG: Yeah, I mean, I do agree 100 percent.  
3 I give the analogy. I mean, our product's a really good  
4 product out there, and we only -- we only crawl a 50-mile by  
5 50-mile section of the Pacific Ocean at one time. That's how  
6 far our net goes, 50 by 50 in the Pacific Ocean. And the  
7 whole Pacific is the internet. Well, 50 by 50 isn't enough.  
8 And, I mean, we're netting so many fish right now in  
9 violations -- a lot of them, again, are client-based -- but  
10 the fact of the matter is we have to remediate all of those,  
11 which takes a ton of time: cease-and-desist, contact with  
12 those vendors. Most vendors don't even know that they've  
13 made a violation, so we have to educate them in the process.  
14 And, so, this process of going 50 by 50 through the Pacific  
15 Ocean is nonstop.

16 Is the technology strong enough right now to cast,  
17 you know, a 5,000-by-5,000 mile net? I don't know of it. It  
18 might be out there. We don't have it, but we're doing our  
19 best at 50/50 right now to make sure that we clean up those  
20 vendors that are bad actors.

21 The other thing I'd like to say is in the space, we  
22 tend to tier providers and vendors, and so there are certain  
23 types of vendors out there, and we analyze their performance.  
24 And clients analyze their performance. And this is a  
25 performance-based system. And, so, if you're providing leads

1 that don't convert, clients aren't interested in them. What  
2 happens is they eliminate that process now or they eliminate  
3 that vendor or they eliminate that channel. And, so, what's  
4 happened over the last four or five years is we've tiered  
5 vendors.

6 And, so, when you look at Alloy Media or you look  
7 at Ampush, we tier those people. They're a two or three  
8 provider that's out there. We know how they perform, and we  
9 know what their tactics are. Will we tell the client about  
10 it? Definitely. Are we protecting the consumer in the  
11 process? Definitely. And, so, we know those tactics that  
12 are out there, and we know what they're employing, and we  
13 know how they're selling those inquiries to the people that  
14 are in the marketplace. Will it educate not only -- not only  
15 the vendors on how to do it properly, but we're also going to  
16 educate the buyers on what those vendors are doing out there.  
17 And through those processes and self-auditing and third-party  
18 auditing, you know, we're going to clean up this space.  
19 We're maturing, and it moves at a rapid pace. It moves so  
20 fast.

21 MR. MARINELLO: Greg, can I ask one quick question?  
22 You know, yeah, the technology is great in terms of  
23 identifying where bad claims and nefarious claims may be, but  
24 you just mentioned the education piece. Does technology  
25 serve some kind of function where you're not only

1 identifying, hey, this is a bad claim, but here's why it's a  
2 bad claim? Here's why maybe a disclosure doesn't -- isn't  
3 effective. Can technology address those types of issues?

4 MR. GRAGG: Not really. I mean, don't get me  
5 started on the disclosure thing because that's a long  
6 conversation, and I certainly have an opinion. It's my  
7 opinion the consumer is never going to really read any  
8 disclosure. You guys don't read your iTunes contract; you  
9 just click through it and move on. And that's just the basis  
10 of the situation. We don't read any contracts online,  
11 whether it's me or anybody else. I'm sure 3 percent of the  
12 population does, but I certainly don't. I just click through  
13 and get what I want, and the consumer does that at the end of  
14 the day.

15 And, so, will disclaimers ever work? Well, not 100  
16 percent. Do we need to provide them in the hopes that  
17 consumers will read them and understand them? Definitely,  
18 definitely we need to do that for the consumer. Do we have  
19 to protect the consumer from themselves? Sometimes, yes.  
20 Yes, unfortunately we do have to protect the consumer from  
21 themselves sometimes and spoon feed that information.

22 If you ask me about disclaimers, I think that, you  
23 know, a criteria of a double popup, if somebody submits a  
24 landing page, a popup that says, hey, to read our disclaimers  
25 click here. You know, that may suffice in the process, to

1 give them a verification of what they've just done, to kind  
2 of knock them over the head a little bit and say, hey, wait a  
3 minute, this is what you just did; you may want to look into  
4 this before you move any further.

5 And, so, those types of strategies, you know, are  
6 being looked at right now, along with, again, do I feel that  
7 there's a need for auditing, do I feel that there's a need  
8 for some form of self-auditing? Yeah, I believe so. Are  
9 things already being done in this space that are good and are  
10 most of the providers bad out there? Definitely not.  
11 Definitely not. I work with them.

12 Are the schools bad out there? No, the majority of  
13 them aren't. You know, are the admissions reps all  
14 strippers? No, they're not. You know, I've met over  
15 probably 5,000 admissions representatives, and they're not  
16 strippers; they're good people and they work 8:00 to 5:00.

17 MR. EAGAN-VAN METER: Let's move over to Kim.

18 MS. TAYLOR: Thank you. First, I think it's  
19 important to challenge the assumption that schools should  
20 even buy leads. Everyone up here has a seat at the table  
21 because these are people that are spending a lot of -- you  
22 know, that are spending a lot of money. Lead gens, it's a  
23 big-money business, those, you know, for-profit, non-profit  
24 education whole sector is real big.

25 But I think it's important to know, like, a lot of

1 this money is coming from online degree recruitment, and when  
2 you actually look at the market, it's a market that's still  
3 in its infancy. And most of those schools aren't buying  
4 leads. And I would challenge the assumption that they even  
5 should. Many of them shouldn't because their tuition is too  
6 low to justify the costs, so they'll just start bleeding  
7 money.

8           And, so, also, it's important to note when you talk  
9 about things like LeadsCouncil, while that's really great,  
10 most of the schools aren't going to be a part of that because  
11 they don't buy leads. And, so, in a perfect -- you know, in  
12 a perfect market, everyone would contribute and they'd all,  
13 you know, buy their \$800 ticket, whatever, to go to LeadsCon,  
14 and that would be great.

15           But the truth is, especially, you know, when I'm up  
16 here as the voice of the -- you know, as the nonprofit  
17 university sector, these are people that aren't -- you know,  
18 they're not buying leads. They're not sophisticated data  
19 marketers. So, I think we shouldn't just come to the  
20 conclusion that everyone should buy leads, and we should do  
21 it better and we should self-regulate.

22           Actually having a dialogue with the consumer -- you  
23 know what's better than buying leads? People coming to your  
24 own website. So, I think we need to have that conversation  
25 with the schools on how do we create more transparency

1 between us and the consumer so we might not need a lead  
2 aggregator. I think if you talk to any for-profit college  
3 exec, the one thing they wish they could get out of is doing  
4 a lot of third-party lead generation from a compliance  
5 perspective, from an operations perspective. It's -- you  
6 know, it's incredibly expensive, and most of the schools that  
7 are going to go online aren't going to try to get 200,000  
8 students.

9           So, I don't think it's an industry we should  
10 necessarily push someone in. Does that mean that it's bad?  
11 No, it doesn't mean that it's -- it doesn't mean that it's  
12 bad, but I think it's -- you know, I think it's important to  
13 note that there's a lot of people with no seat at the table  
14 right now, and the people that are concerned with -- you  
15 know, are concerned with the compliance are really  
16 sophisticated marketers, and so, you know, when Upper Iowa  
17 University goes online, they're not going to be -- they're  
18 not going to be at LeadsCouncil; they're not going to be, you  
19 know, using all of these services.

20           And I think also when you get into lead generation  
21 and you become a sophisticated lead buyer, you also have to  
22 support an entire ecosystem of products because you have a  
23 whole new set of problems. You've got to verify data and  
24 phone numbers and addresses and how that data moves. And  
25 then you got to track where it's coming from. And then you

1 got to know if the copy is compliant.

2           So, now, you're asking all these schools that were  
3 never even buying leads, not only, oh, you should go buy  
4 leads, but now you've got to buy these five new products to  
5 be able to even operate in the industry. So, you know, I'm  
6 going to take the contrarian tech founder approach and be  
7 like maybe they shouldn't buy leads at all, and maybe that's  
8 a conversation we should have. And I think if you look at  
9 something like the college score card, which is -- which is  
10 amazing, something -- you know, something really critical is  
11 missing from it that you can't filter for schools that  
12 actually have online degrees.

13           So, how do we create that transparency in the  
14 marketplace so someone doesn't have to go to  
15 BestDegreeEver.org, you know, they can go -- they can go to,  
16 you know, Online.Texas.edu or whatever, you know, whatever  
17 that is. And how do we -- I don't think it's our job to  
18 necessarily even educate consumers on how lead generation  
19 works. I think it's our job to educate consumers how to look  
20 for a school, should they even go to school, do they need a  
21 degree.

22           And the best conversation they will have with that  
23 school isn't going to be through, you know, a third party  
24 auto-dialing them; it's going to be by interacting directly  
25 with the school. And, you know, there's -- you know, I think

1 there's plenty of blame to go around for everyone. And I  
2 think, also, I would put that on the universities to be --  
3 you know, to be more transparent and to also, you know,  
4 improve your consumer experience for prospective students.  
5 It's hard, you know, especially on the nonprofit side. It's  
6 hard to create a great consumer experience if you're in  
7 denial you're serving a consumer.

8           And, so, I think that's something, you know, that's  
9 shifting right now, but, also, you know, those brands, they  
10 don't necessarily need to buy leads. They have lots and lots  
11 of demand, very bad technology. A lot of the major -- on the  
12 nonprofit side, a lot of the major education companies have  
13 applications for admission that don't even work in Chrome  
14 yet, so forget buying -- forget buying leads, like, let's --  
15 you know, let's help them crawl before they can walk.

16           And, Peter, I'm sorry. I'm sorry I broke your  
17 heart.

18           MR. MARINELLO: Oh, well.

19           MR. EAGAN-VAN METER: Okay, so, moving on. On our  
20 first panel today, we heard from a company that says it can  
21 assign every lead an ID that would allow a buyer to keep  
22 track of the URL the lead came from and everybody who has  
23 bought and sold it previously. Is this a feasible solution,  
24 a feasible approach that could be applied more widely?

25           MR. GRAGG: If everyone uses it. The deal with

1     LeadiD is you've got to participate for them to catch you.  
2     And, so, you have to submit your URLs. Is it a good system?  
3     Yes, if everybody participates. Will everybody participate?  
4     No. Is everybody participating now? No.

5             Another analogy in the lead space that I use is a  
6     tree, and the trunk of a tree is where it goes into the  
7     funnel for the client. The rest of the tree, all the  
8     branches are interconnected and each branch is a lead  
9     provider. And, so, if you start at the top of the tree where  
10    the lead starts and start bouncing branch by branch down  
11    through the process, you can kind of get an idea of how many  
12    branches it actually goes through to get to the trunk. Well,  
13    if not all of those are participating in LeadiD, you won't  
14    catch all of them, and you don't know how far upstream it  
15    actually goes.

16            So, you need to employ LeadiD, yes, and then you  
17    need to employ PerformLine and Omniangle or some sort of  
18    tools. And then you do need some sort of self-regulation  
19    associated with that. And, so, by doing all of those or  
20    self-auditing, by doing all of those together, you kind of  
21    squeeze out all of those bad providers. No one solution will  
22    ever get you there. There's never a panacea, and I've  
23    learned that. What you do is you use the best tools that you  
24    have possible, the best technology that you have possible to  
25    track down these gamers or these crooks that are out there.

1           MR. MORGAN: I would just add one thing. I would  
2 say most of our clients that we work with use a few different  
3 items across their -- their businesses in a few different  
4 manners. It's strange when you do start to look at  
5 compliance, that may be one of the most important parts of a  
6 brand's business, and they have analytics on almost every  
7 part of their business except compliance.

8           So, the type of analytics that LeadID can provide  
9 or other companies can provide around this part of the  
10 business is really critical and deserves the same seat at the  
11 table and, quite frankly, the same capital investment. We  
12 spend so much time talking with companies that spend hundreds  
13 of millions of dollars a year on marketing and are challenged  
14 with the thought of investing anything more than they  
15 unequivocally have to in compliance.

16           And when you want to talk about protecting the  
17 consumer, that's obviously the things where you know you are,  
18 the things that you can control and affect. And I do believe  
19 that if a company has a good pro-consumer outlook that them  
20 policing themselves and there being strong penalties if they  
21 don't do have the downstream effect of protecting the  
22 consumer, but the truly bad actors, the truly bad actors out  
23 there are probably people who are using a well known brand  
24 for ill-gotten gains that the brand may not even know about.

25           So, technologies that track about come to your

1 website, the conversion rates of your leads on your website  
2 and how they connected with you is great, but if someone saw  
3 your brand and didn't go to your website, was sent to another  
4 website, using your brand or your assets where there's brand  
5 infringement and things of that nature, that's where we see a  
6 lot of consumer harm being done. And that's really a  
7 blindspot to most companies that we're helping some companies  
8 solve because that is someplace where they have massive  
9 reputational exposure.

10 The consumers have the opportunity to be victim to  
11 a massive bad, and when you start looking at things like the  
12 CFPB consumer complaint data base, not every complaint in  
13 there about a company is triggered off stuff that they did.  
14 So, I'll stop.

15 MS. MITHAL: Great. So, we have less than 25  
16 minutes left, so if you have any questions, I think Spencer  
17 is walking around and is available to take your cards.

18 We've talked a little bit about industry solutions,  
19 technology solutions for the kind of consumer protection  
20 issues we see in the lead-gen space. What about law  
21 enforcement? Is that necessary? When is regulatory action  
22 necessary? I'm going to start with you, Joseph.

23 MR. CHAMBERS: Well, I think that law enforcement  
24 is going to be necessary given the limits -- the competitive  
25 nature of the industry, given the vast sums of money that are

1 available, and given the risk to consumers, law enforcement  
2 is going to have to be part of it. I think, you know, from  
3 our perspective, we in the AG community have a few different  
4 models that we can employ. One path is to identify and  
5 investigate a particular bad actor, and it may be a bad actor  
6 that is using the brand of another company without permission  
7 as has been mentioned; or it could be a lead vendor that is  
8 not being sufficiently monitored and is putting out a  
9 solicitation that is rife with misrepresentations.

10 If that company is operating in my state, and it's  
11 soliciting consumers in my state, that's a relatively easy  
12 case for me to bring. But in the online space, it doesn't  
13 always work like that, right? So -- and it's not like a home  
14 improvement contractor in your state that you can identify  
15 and bring an action against if they're harming consumers.

16 You have to be able to find the people, and I think  
17 an earlier panel described the Whack-a-Mole problem; that  
18 even if we are able to successfully bring that case, we have  
19 only addressed a small part of the marketplace and the bad  
20 actor. So, you know, moving up the model to the next best  
21 scenario is engaging with an individual company, perhaps a  
22 lead buyer, within a vertical, and engaging either informally  
23 or through an enforcement action in seeking either terms,  
24 negotiated terms, or injunctive terms of a judgment where the  
25 company would have to comply with a set of principles that

1 might be somewhat similar to a best practices or a code of  
2 conduct. But that would address what that specific company  
3 is doing in the space.

4 I think the next best thing beyond that is to  
5 engage an entire industry of lead buyers within a vertical,  
6 because then you're driving the marketplace in lead  
7 generators. You're capturing a broad swath of one industry,  
8 engaging in a conversation with them about a set of best  
9 practices that they all can agree to for when they interact  
10 with lead vendors and put restrictions on the lead affiliates  
11 and enshrine adverse actions to lead vendors and their  
12 subaffiliates that don't comply with the contractual terms  
13 and put in place, you know, lots of other specific  
14 prohibitions.

15 And, you know, I think that there are lots of  
16 examples where the attorneys general in partnering, of  
17 course, with the FTC and our other federal partners, the  
18 CFPB, where we made progress within an industry. I think my  
19 Attorney General, George Jepsen, has been pretty active in  
20 the privacy and data security space. He created, for  
21 example, a new unit within our office that's done this  
22 informal engagement with a company -- companies, and have  
23 gotten traction. And I think like just like in that context,  
24 our offices need to develop the technical expertise and the  
25 experience and the strategic partnerships with other

1 government agencies and those in the industry to really  
2 figure out a multi-prong approach that will include  
3 enforcement actions but hopefully goes beyond that.

4 MS. MITHAL: And let me turn it over to the rest of  
5 the panel, too. I see the rest of the panelists are  
6 interested already. Okay, let me start with you, Peter.

7 MR. MARINELLO: I am ready to go. You know, those  
8 are some good salient comments, Joseph. You know, from the  
9 prism of self-regulation, a good robust self-regulatory  
10 program really has to work hand-in-hand with law enforcement.  
11 I think we all are pretty much smart enough to know that  
12 self-regulation can't be viewed as a replacement to law  
13 enforcement, but should really serve to complement it.

14 The important thing that self-regulation, I think,  
15 does, it allows the allocation of some very limited resources  
16 of the government to really concentrate and focus on the  
17 egregious, nefarious players. And, generally, again, because  
18 it's a voluntary process, self-regulation can work and  
19 collaborate with industry members; however, again, because of  
20 the resource issue that always goes on in government, that  
21 always goes on in the state AG's office, they need to focus  
22 their attention on the bad players. And I think that's where  
23 self-regulation really can assist.

24 The one last thing about self-regulation in a law  
25 enforcement context, it shouldn't be viewed by any means as a

1 free pass if you're participating in self-regulation, okay?  
2 You know, state AG, FTC, FDA, CFPB, anybody still it's up to  
3 them to figure out which guys they want to pursue and who the  
4 bad actors are. And just because you participate in -- or  
5 with the CBB, you're not getting a free pass. So, let me  
6 just make that point.

7 MS. MITHAL: And, Greg?

8 MR. GRAGG: I think Lisa was up before me.

9 MS. MITHAL: Okay.

10 MS. MCGREEVY: Well, I just want to add on to what  
11 everybody has been saying here, and that is it is all  
12 mutually reinforcing. We are all partners in this together.  
13 Government, federal government, state government, local  
14 government, and the industry have to work hand-in-hand. And  
15 I think the discussion today shows the different parts of the  
16 ecosystem that we all have to bring together here.

17 We have this wonderful thing out there called the  
18 internet that has brought incredible changes to our lives,  
19 many of them and most of them are incredibly beneficial. In  
20 our industry, the democratization of credit is unbelievable  
21 of what's happened. But we know what the dangers are. We've  
22 cleaned up the advertising in our industry.

23 I was amused to see the ad that you put up this  
24 morning for short-term loans using our best practices. You  
25 know, you used to go out there, three, four years ago, and

1 you could see all kinds of ads out there saying, oh, \$5,000  
2 in your checking account tomorrow, no credit checks. You  
3 don't see that anymore.

4 Why? Because we went out and said, you know what,  
5 that's not right. And we put in place the best practices and  
6 we've held the industry accountable, and I would venture to  
7 say that you see virtually no ads. And if you see one, let  
8 me know, because I'll go after it and take it down.

9 MR. GRAGG: I think there are enough rules and  
10 regulations out there from the FTC to the CFPB to the  
11 Department of Ed to the states attorneys generals. I mean,  
12 they've all outlined guidelines or process or procedures that  
13 we can follow. And, so, I think the rules are out there.  
14 And I liken it to parenting. I've got three kids. If I tell  
15 my son not to go outside but he still goes outside and I  
16 don't ground him for going outside, will he stop going  
17 outside? No.

18 I think the rules and regulations are there; we're  
19 just not implementing, we're not executing on those, and  
20 we're not going after those bad actors. And you're right, we  
21 need to work as a partnership here. We need to share  
22 information with each other. By doing that, we'll come to  
23 the best solution.

24 The problem with more regulations is you're going  
25 to push the good actors out of the space. You're going to

1 regulate the good actors out of the space. And that's not  
2 what you want to do for a good ecosystem.

3 MR. MORGAN: I actually have a question, I think,  
4 for Joseph and for the FTC and anyone else. One thing I  
5 don't think I've heard brought up today is the concept of  
6 hidden domain registration. So, I don't know if anyone else  
7 knows this, but I don't know of any other type of business  
8 you can run in the United States where if someone wants to  
9 find out who owns the business they can't find out.

10 And if you go onto a site like Whois or a domain  
11 registry company like GoDaddy.com and you want to find out  
12 who owns Army.com, a site that was brought up earlier today,  
13 you can find out that the domain registry and the ownership  
14 is hidden -- hidden. So, you don't know if one person owns  
15 that one website or if that one person owns a million  
16 websites.

17 And when you look at rooting out the bad actors,  
18 stopping guys who own 100,000 websites from just stamping  
19 Army2.com on that website and launching it again, unless  
20 there is something that's done about the hidden domain  
21 ownership, it's going to be almost impossible for anything to  
22 really take root, because you won't know when the person's  
23 actually gone. And even when there are injunctions against  
24 people from operating in industries, if the domain registry  
25 is hidden, how do you know that they're not?

1           MR. MARINELLO: Yeah, it's a big challenge for us,  
2           too, when companies are registering by proxy, trying to  
3           figure out exactly where the source of the advertising is  
4           coming from, and then all of a sudden, you go to Whois, and  
5           you register by proxy to try to follow up and, my God, that's  
6           just this endless, endless aggravating loop, so...

7           MS. MITHAL: And I think Kim had a thought earlier.

8           MS. TAYLOR: Yeah. I think we can all agree on bad  
9           actors and there's people doing outrageously bad things, and  
10          we want to, you know, stop them and blacklist them. And  
11          that's fine, but I think it's important to look at the  
12          industry, even when it's, quote, unquote, working well. Even  
13          when it's working well and there isn't anything fraudulent,  
14          is it the right thing, is it fair to the consumer. And I  
15          think right now, the answer is no.

16          Like -- and obviously I'm speaking for the  
17          education vertical here. You have someone that is trying to  
18          make a major life decision about where to go to school. They  
19          tend to be low-income; they tend to be first-generation  
20          college students, which is why they're clicking on a banner  
21          ad on a lead-gen site in the first place.

22          And, so, I think even when everything's been  
23          compliant and it's run through the five different  
24          technologies that they sell that accompany lead-gen -- you're  
25          telling a user that you're matching them to the best school.

1 And we're not; we're selling people at a live auction to the  
2 highest bidder for one of the most important decisions that  
3 they're going to make in their life. And the people that buy  
4 leads are the highest priced schools. It's not the community  
5 college down the street.

6 And, so, when we tell someone -- we put them  
7 through a funnel and we collect all this info from them, I  
8 think we're misrepresenting their actual options. And  
9 they don't know, so just challenging the assumption of how  
10 the industry even works today, that it's a good thing, think  
11 of -- you know, think of all these low-cost options people  
12 never found out about, and there are many, many schools -- in  
13 fact, most will never buy leads.

14 So, right now, we're just talking, you know, the  
15 people that can afford to buy leads. And I think it's also  
16 important to note this. It's not about for-profits are bad  
17 and nonprofits are good, but generally the cost of traffic is  
18 set in Google. Google doesn't adjust their cost per click  
19 based on your tuition, so let's say a lead costs \$50 and you  
20 have a 1.5 percent enrollment rate. It costs you \$5,000 to  
21 enroll a student. If you are a community college, you can't  
22 afford to buy leads, which is why none of those people are  
23 here, and they probably never will be here, and they're not  
24 going to be represented, you know, at the table or by anyone,  
25 you know, in these discussions. And most of them will

1 probably never even understand the lead-gen industry. I  
2 think half of us here don't understand it because it's a  
3 confusing thing to understand, but we throw the consumer into  
4 it and just expect them to -- you know, expect them to figure  
5 this out. And, so, I think -- you know, I think we should  
6 just challenge the assumption of how it even works today and  
7 how do we create more visibility for options for the -- for  
8 all these great schools out there that are never going to buy  
9 leads.

10 MR. EAGAN-VAN METER: That's a very appropriate  
11 transition to our last, I guess, topic of discussion, which  
12 is the consumer themselves, and to what extent -- you know,  
13 how can we educate consumers about this space. And we'll  
14 start with do consumers know when they search for education  
15 opportunities that they may be -- that they may be matched  
16 with the highest bidder and not potentially the most  
17 appropriate option?

18 MR. GRAGG: Generally, it's not the highest bidder.  
19 There's a set price out there for those inquiries. And, so,  
20 nobody's bidding on any inquiries. Those prices are already  
21 set.

22 MS. TAYLOR: That's not -- that's not necessarily  
23 true. I think one of the -- I think one of the -- one of the  
24 main reasons --

25 MR. GRAGG: There's not a ping tree in the system.

1 I haven't seen one, and I've looked in the industry for 25  
2 years.

3 MS. TAYLOR: Well, I think --

4 MR. GRAGG: I think, you know --

5 MS. TAYLOR: Well, it was only invented a few years  
6 ago, so that wouldn't have mattered.

7 MR. GRAGG: Well, I've been around for 20 years and  
8 I haven't seen it, Kim.

9 MS. TAYLOR: I think when you -- I think when you  
10 look at lead --

11 MS. MITHAL: Let's let Kim finish, and then we'll  
12 move on to you, Greg.

13 MS. TAYLOR: I think when you look at something  
14 like lead scoring and also having worked in the industry and  
15 having worked on this specific thing, when you look at  
16 something like lead scoring, you have certain schools that  
17 have so much data that they can assign a score on someone's  
18 likelihood to enroll. Ten -- let's call it one to ten: ten  
19 really likely; one not going to enroll. And, so, when the  
20 school buys leads, they'll be, like, I don't want any of the  
21 ones to threes, like, send those over to Peter; we don't want  
22 them, whatever.

23 But the tens, we'll actually -- we'll pay more for  
24 the tens. So, once someone has filled out the form, you ping  
25 that against the data base and you get the score. And this

1 is pretty much how every, you know, large school with over  
2 50,000 online students is going to operate. So, it is -- you  
3 know, I disagree with you. It doesn't mean everyone's doing  
4 it, but it is, in fact, a live auction, and I did, in fact,  
5 work on it. Otherwise, I spent years in doing God knows  
6 what.

7 And, so, I think it's important. You know, I think  
8 it's important to note that. And it's not necessarily always  
9 the highest bidder, but the effective CPL is one of the most  
10 important metrics in lead gen that you do rope people off  
11 because you have to make money. You're fronting the cost to  
12 buy the traffic. You bought the lead.

13 You know, if you guys bought traffic to your  
14 website for \$25, you know, you're trying to sell it at \$50.  
15 And then one of those schools is going to come back and say,  
16 we used all this technology; we're not paying for 20 percent  
17 of the leads. That's why the lead-gen industry is operating  
18 on these really thin margins.

19 If I went into a venture capitalist, I can't tell  
20 them I work in lead gen. They would never fund me if I said  
21 that I was in this business, because they just -- they hate  
22 the business because they think -- yeah, they think it's  
23 dying. But, yes, and so I think price is very important.  
24 The consumer has no clue, and someone needs to help them.

25 MR. EAGAN-VAN METER: All right, Greg, yeah, if you

1 want to respond to that, and then Lisa. I believe we have  
2 some slides of yours to show after.

3 MR. GRAGG: Sure, I can understand that's how  
4 Alloy and Ampush ran things when you worked there, but, you  
5 know, the majority of the lead providers that are out there  
6 don't do that. You know, and the majority of the buyers out  
7 there --

8 MS. TAYLOR: The majority of schools don't use lead  
9 scoring to price leads? Are you joking?

10 MR. GRAGG: I work with mids and smalls and, you  
11 know, we work with over 150 schools, 700 campuses. And I can  
12 tell you right now, we have price set on everything. And,  
13 so, you know, I think again where you came from, you're  
14 basing it --

15 MS. TAYLOR: It's not where I came from; it's  
16 how -- it's how all the major -- it's how all the major  
17 schools work. So, I don't know if you don't have the  
18 technology to implement it, but it's not about where I came  
19 from. That's just the --

20 MR. GRAGG: Well, you're looking at publicly traded  
21 companies that have a bottom line to push. Those people  
22 aren't necessarily interested in everything that we're  
23 interested in. We're interested in different things. The  
24 people who have been around the space in the EDU certainly  
25 are concerned about it. Certain companies aren't concerned.

1 Certain companies take advantage. The majority of the  
2 clients and the people that we work with are concerned.

3 I've been to graduations. I've seen students.  
4 I've seen students cry at their graduation because they're  
5 the first ones graduating. I think consumers will always  
6 have a choice and should have a choice to pick their channel  
7 on how to reach a school or to get a loan. How we regulate  
8 that, how we manage that is up to us, but I certainly won't  
9 restrict the pipeline if it's fair game.

10 MS. MITHAL: Okay. And, Lisa, I know you had those  
11 slides to show.

12 MS. MCGREEVY: Yeah. One of the things we, you  
13 know, in our world that's important to us is to make sure  
14 that consumers know which sites to go to for companies that  
15 abide by OLA's best practices. So, we created this "Look for  
16 the Seal" campaign, and this really came out of the FTC, an  
17 enforcement action about a year ago, where the FTC went into  
18 some companies and found some really bad practices. And we  
19 were so upset that those companies were doing those things  
20 and we didn't know about it. And, so, we created this "Look  
21 for the Seal" campaign, which is embedded on over 700 member  
22 company websites.

23 And, then, not just do we have the campaign, but  
24 then we put advertising dollars behind it, where we went out  
25 and did our own advertising campaign last fall. We're doing

1 it again now because this is the heaviest time of the year,  
2 where we've been able to advertise so consumers know when  
3 they go on sites, look for the OLA seal, because they know  
4 that they're dealing with companies who abide by our best  
5 practices.

6 MR. MARINELLO: If I hover the seal, do I get  
7 additional information? Just out of curiosity.

8 MS. MCGREEVY: Yes. If you go over the seal and  
9 you click on it, it takes you to our website.

10 MR. MARINELLO: We didn't prepare this, by the way.

11 MS. MCGREEVY: Thank you for that, Peter. It takes  
12 you to our website, where there's all kinds of consumer tips  
13 about how to ensure that you have -- that you are an informed  
14 borrower when you go online, what you should expect, what you  
15 should look for, and how to make sure that you are protecting  
16 yourself against fraud. I think that's very important for  
17 us, and that's why we put our advertising dollars -- we will  
18 have spent over \$100,000 on our advertising effort on these  
19 banner ads to get it out there because we think it's so  
20 important that borrowers know who to borrow from.

21 MR. EAGAN-VAN METER: Thank you.

22 On an earlier panel, Pam Dixon brought up the fact  
23 that a number of -- your consumers may enter their  
24 information in a number of different places when seeking out  
25 different either loan, education, or other opportunities. Is

1       there a way, perhaps -- and then, you know, it results in  
2       maybe five times as many calls for the number of forms they  
3       entered. Is there, perhaps, a way to curtail this  
4       information at all? There may not be, but --

5               MR. MORGAN: I think that folks like LeadID have  
6       been doing a lot of work in that space. A lot of what's  
7       tracked is information sets, so they're able to tell how old  
8       something is, whether it's come in as a duplicate before.  
9       Obviously bad practices of people buying old leads and  
10      reselling them get affected by this, but also there are  
11      certain types of products and there are certain socioeconomic  
12      classes where -- and certain time-based needs where if  
13      someone wants something they are going to try and get it in  
14      as many ways as they can.

15             So, part of that is is there technology that can  
16      help, and there's technology that can help to a certain  
17      extent, but, again, that's a consumer education challenge,  
18      too. But you can't stop a demand curve. If I have to pay  
19      rent on Friday and I just crashed my car and I need a payday  
20      loan and no one is calling me back for a small-dollar loan  
21      and I have an extreme sense of urgency, I'm very motivated to  
22      fill out many, many things. And it's probably that impulse,  
23      that the opportunity to have a solution, the extreme need you  
24      may be under that can sometimes compel people to put their  
25      information in far more places than they would ever want to,

1 whether they knew it was going to get bought and sold or not.

2 MR. CHAMBERS: One quick point on consumer  
3 education and, you know, obviously it's not a panacea, it's a  
4 complex market, it's difficult for many people to understand.  
5 But I think that consumer education does have a place, and  
6 whenever we do an enforcement action, we try to couple that  
7 with consumer education.

8 And I think, you know, one example is scams around  
9 FAFSA, which I think the CFPB had a press release yesterday  
10 about their action, but just as a coincidence, we put out  
11 about a year ago because of a complaint regarding the same  
12 entity, we put out a press release warning people about FAFSA  
13 scams and trying to direct them to the good sites where they  
14 can get other information. And I think that's obviously not  
15 a -- not a panacea, but something that we need to continue to  
16 do and continue to think about.

17 MR. MARINELLO: Can I just jump in really quick on  
18 consumer awareness? You know, it's funny, because everybody  
19 in this room is very cognizant of the good work that the FTC  
20 does regarding consumer awareness, whether it's the dot-com  
21 disclosure guide, the update of the FTC testimonial and  
22 endorsement guide. Leslie Fair has this great business  
23 center blog, as well, but I'm not sure it's on the radar of  
24 consumers, actually, though.

25 BBB steps in here. You know, the BBB, there are

1 116 different bureaus throughout the United States. They  
2 send out these scam alerts about certain things. As a matter  
3 of fact, they just unveiled this new scam tracker website  
4 that I think there are already 5,500 complaints, and it's  
5 only been a couple of months old. As a matter of fact, you  
6 know, Ed had mentioned on the previous panel about the credit  
7 cards with the chip in it now for security.

8 Of course, the fraudsters were all over that right  
9 away, and there was a BBB alert on Monday, actually, talking  
10 about emails that have been going out saying, hey, you may  
11 have received a credit card from your bank with the new chip  
12 in it. Do me a favor, confirm the information, your personal  
13 information and your bank information. And these are the  
14 emails that are going around.

15 So, anyway, the BBB, obviously consumer trust, as  
16 you had mentioned, is such an important commodity. BBB's  
17 been in this business for a hundred years of advocating  
18 consumer trust. So, I'm going to leave you with that.

19 MS. MITHAL: And Patrick has woven in some audience  
20 questions with his questions. I just want to ask a few more  
21 of the audience questions with the couple of minutes we have  
22 remaining.

23 There's a question about bad actors. How many of  
24 the panelists report information to regulators for  
25 enforcement of bad actors, and if not, why not?

1           MR. MARINELLO: I'll start. You know that we do.  
2       So, I'll leave it there.

3           MS. MITHAL: Excellent, Peter.

4           MS. MCGREEVY: We do, and we want to continue to do  
5       it.

6           MS. MITHAL: Okay, great. Another audience  
7       question: Shouldn't every lead buyer demand use of LeadID  
8       and only buy leads that were witnessed by LeadID? Doesn't  
9       this force out bad actors?

10          MR. MORGAN: I would say that that would be a very  
11       strong position to take. Some companies do. It's -- but,  
12       you know, it's a multi-prong solution. And, again, as we  
13       said before, that can solve a vast majority of the session-  
14       based information that's out there, but you have to couple  
15       that with the content that's out there. So, you can't just  
16       look at did I get a real human being to my website; you also  
17       need to be able to see what was the content that human being  
18       saw.

19          So, LeadID is a great tool. You have to couple it  
20       with tools like other ones that we've mentioned -- I'm  
21       obviously fairly biased towards the company I work for --  
22       that can actually show you the content in a way that you can  
23       remediate that. You have to be able to use it and there's --  
24       the pushback that you sometimes hear, the companies  
25       implementing LeadID is they don't want to put code on their

1 website and they can't get their affiliates or their lead  
2 generation partners to put the code on the website. That's  
3 something that they've invested a lot of money, time, and  
4 energy to try and combat.

5 Our approach is very different, where there's no  
6 code that anyone puts on the website. Everything we monitor  
7 is in the public domain, so there's no way to prevent our  
8 crawler from looking at your site. And once we're monitoring  
9 you, there's no way for you to prevent us monitoring you.  
10 So, we can also monitor to make sure that companies have been  
11 removed from websites.

12 MR. GRAGG: David is right. LeadiD will stop the  
13 process, where the lead came from, but then you also need to  
14 monitor the content. And, so, the content could be in  
15 violation, and so you need to go out there and look at that  
16 hard content on the site, not only where the lead came from,  
17 but what the information on the site is actually saying.  
18 And, so, again, a multi-prong strategy is really your best  
19 strategy at the end of the day.

20 MS. TAYLOR: Sorry, just to add on to that.  
21 LeadiD, great, you know, a great company, friends that  
22 work there. I thought it was a little bit of a self-  
23 serving question. And then also I think whenever you get  
24 into that --

25 MS. MITHAL: Do you think LeadiD asked it?

1           MS. TAYLOR: I think whenever you get into that  
2 territory where you're kind of forcing something like that --  
3 like not LeadiD, but anything on people, it's kind of -- you  
4 know, it's kind of hard. And, also, it's the type of  
5 technology you'd use if you're doing really big volume of  
6 leads.

7           I think a lot of the -- you know, a lot of the  
8 compliance technologies, that's who they're -- that's who  
9 they're for, these people that are trying to, you know,  
10 validate information or make sure people are who they -- are  
11 who they say they are, but it's not something you could,  
12 like, force on an entire industry, especially if you look at  
13 like smaller schools that might not even use something like  
14 Google Analytics, let alone put some code into their -- you  
15 know, into their website.

16           MS. MITHAL: Okay, great.

17           MR. EAGAN-VAN METER: Thank you all for  
18 participating in our panel today. And thank you to  
19 everybody. We're going to have a few closing remarks from  
20 Malini.

21

22

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24

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## CLOSING REMARKS

1  
2 MS. MITHAL: That's right. Okay, so, having  
3 concluded this final panel, I wanted to add a few brief  
4 closing thoughts, and in case there are any Halloween costume  
5 parties everyone has to get to, I'm going to keep this very  
6 short.

7 MR. EAGAN-VAN METER: Or already missed.

8 MS. MITHAL: So, I think we would all agree that  
9 we've learned a great deal today from the panelists sitting  
10 up here right now and from the other panelists that  
11 participated today. Thank you so much for doing that.

12 We've heard that lead generation can offer a wide  
13 variety of consumer benefits, consolidating a lot of  
14 information and offers for consumers. We've heard that in  
15 the mortgage market lead generation has allowed firms to  
16 access more information, which, in turn, has led to an  
17 increase in mortgages being denied but may have led to lower  
18 mortgage rates and reduced foreclosures. This raises  
19 questions about whether good lead generation practices can  
20 help lead to more accurate decisions.

21 But we've also heard about risks that come with  
22 lead generation. We heard about a recent study showing the  
23 risks of payday lending lead generators sharing consumers'  
24 sensitive data widely, including with fraudulent companies.  
25 We heard that in the education marketplace consumers think

1 they're applying for jobs or learning more about government  
2 benefits, but instead, the information they supplied is being  
3 sold to places consumers wouldn't have expected.

4 Industry groups are taking some steps to combat  
5 these practices, but what else needs to be done? What are  
6 the next steps? So, again, in the spirit of Halloween, I'm  
7 going to look into my crystal ball, and I'll make some  
8 predictions for the near future.

9 So, I predict many people in this room will be  
10 submitting public comments to the FTC by December 20th, which  
11 is our comment deadline. I also predict that we will read  
12 them closely to figure out what the most important steps are  
13 next for us, whether they involve guidance, enforcement, or  
14 other measures. I also predict that on the law enforcement  
15 front, I think it's likely we'll continue to look at unlawful  
16 practices involving lead generators, and we'll bring  
17 enforcement actions where appropriate.

18 So, I'd like to close by again thanking our  
19 panelists for participating today and thank you all in the  
20 audience for attending and asking some great questions.

21 (Applause.)

22 (Whereupon, the workshop concluded at 3:46 p.m.)

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## 1           C E R T I F I C A T I O N   O F   R E P O R T E R

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3       MATTER NUMBER:   P134809

4       CASE TITLE:    LEAD GENERATOR TARGETING PROJECT

5       DATE:   OCTOBER 30, 2015

6

7           I HEREBY CERTIFY that the transcript contained  
8       herein is a full and accurate transcript of the notes taken  
9       by me at the hearing on the above cause before the Federal  
10      Trade Commission to the best of my knowledge and belief.

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DATED:   NOVEMBER 12, 2015

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JENNIFER METCALF

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## C E R T I F I C A T I O N   O F   P R O O F R E A D E R

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20           I HEREBY CERTIFY that I proofread the transcript  
21      for accuracy in spelling, hyphenation, punctuation and  
22      format.

23

24

25

SARA J. VANCE