

WILL MAXSON: Good afternoon, everyone, and welcome to the third and final panel of our workshop today. This panel is titled Pros and Cons of the Current FDD Format. We'll be running about 50 minutes today.

Just a housekeeping matter. I'm going to say on behalf of myself and all of the panelists, I'd like to note that the views we express today are our own and don't necessarily reflect the views of the Commission or of any one particular organization, law firm, or company.

Also if we have time, I'll try to incorporate questions that we get from viewers. If you have any questions, please submit them to franchiserule@ftc.gov.

So we have a great panel today. I'd encourage everyone to go online and read everyone's full bio. I'm going to give a very quick overview of everyone that will not do justice their full bio, but just so that you know who we've got here.

So if you've watched the whole day, you've already seen Dale Cantone. He is an Assistant Attorney General for the State of Maryland and the Deputy Securities Commissioner for the Maryland Securities Division. Mr Cantone is the Chief of the Franchise and Business Opportunity Unit.

Kimberly Crowell, along with her husband co-founded a company that owns and operates 33 Jersey Mike's subs restaurant franchises, with 13 stores in development, and employs approximately 300 people.

Ronald Gardner is a partner at Dady & Gardner, P.A. He limits his practice to the representation of franchisees, franchisee associations, dealers, and distributors, and their relations with their franchise owners, manufacturers, and suppliers.

Earsa Jackson is a partner in the Dallas office of Clark Hill and the team leader for the firm's Franchise and Licensing Group.

And Carl Zwisler is Senior Counsel and a member of the Lathrop GPM Franchise and Distribution Practice Group in Washington, DC.

So today, we're going to talk in this panel about financial disclosure documents.

We've talked some today already about what should be included in those, whether there are things that should be added to them, changes that should be made to FDDs as far as the substance of what might be in them, or whether they're appropriate the way they are now.

What we're going to talk about some is really the structure, the layout, and the length of FDDs. And so we're going to start out talking about the length of that [INAUDIBLE]. So I'm going to start out with Carl and ask him, some financial disclosure documents are often hundreds of pages, very long documents, in many cases. Does the length of the FDDs deter prospective franchisees from reading them?

**CARL
ZWEISLER:**

Well, thank you for the question and for inviting me to participate on this panel. Let me start by saying that I agree with Congressman Hern who kicked off this whole afternoon by saying that by and large, I think the rule is functioning effectively, and that the disclosures as required in the concurrent formats work. And they work reasonably well.

I would also like to note that as much as we all want the FDD to be readable and understandable by everybody else, the rules' mission is to require franchisors to provide material information to prospective franchisees. It's not to require prospective franchisees to read the information as much as we would like to have them read it, which is not to say that they should not be readable.

But I think there's-- I think, first of all, the longer the document-- from my personal perspective-- the less likely I am to be interested in reading all of it. That's just me. And I suppose it's a lot of people. My wife was an English major, and she read all kinds of long books. And I could never put up with all of that volume.

But I don't think that's the only reason that some people don't read FDDs. First of all, many prospects today are introduced to a franchise, or very early on in their consideration of the franchise, speak with trusted referral sources. And if they trust the referral source who shares a success story with their franchise operation, that may mean a lot more to them than the details about the franchise and the franchise relationship that are spelled out in a FDD.

Other prospects probably feel confident from the reviews that they've read online

about the franchisor. And they make up their minds about that without first looking at an FDD. And as any of us know who have gone online to search for a franchise, you can find comparisons of franchises, rankings of franchises, list of unhappy franchisees and franchises.

If the franchisor has been in problems, there are stories about what the problems are on the franchise relationship. So there is a wealth of information that will steer people either to proceed or back away that may be more important in some respects than what's in the FDD. Many franchisee prospects already own a franchise.

In fact, the majority of franchisees own more than one. So it may be less likely that they're going to read an additional FDD when they make a second investment. And finally, for some people, they're just disinclined to read things like instruction manuals and assembly manuals. They'd rather do it their self, and they just don't want to take the time.

So I don't know that we can address those issues with everybody or with an FDD. But I do think it's important that when we evaluate the role of FDDs and whether they are readable and usable right now, we look at the data. And there is very little data that's available about franchisees experience with FDDs.

The only one that I have been able to find is a 2015 survey by Franchise Grade in which 1,122 franchisees were asked whether they had read and understood the FDDs they received. 72% of them said they had a clear understanding of the obligations and commitments within franchise agreements.

82% reported having read the FDD and the franchise agreement. 76% said they had consulted with an attorney or an accountant. So despite surveys of so-called franchise experts, and those of us who only get involved in the process when we have complaining franchisees come to us, the only research that seems to be credible out there says that franchisees do read the research.

Now, I think it's also important to put the FDD and the research in context. The survey that I just mentioned as well as a couple of others of experts really focus on existing franchisees. What it doesn't focus on is the franchise sales process.

And according to FranConnect, which regularly reviews franchise sales and tries to help its clients find more efficient ways to sell franchises, only about 1% of all franchise leads is converted to an actual franchise sale. That means 99 out of 100 may or may not get the FDD and read it. And they're making their own decisions about whether to buy a franchise.

So if we're going to look at the validity and the helpfulness of an FDD, I think we need to look at research about what these prospects are [INAUDIBLE] concluded a franchise arrangement. So I'll leave it here at that point. But I think it's important to look at the data, and that there should be more data before any material change is made relating to readability of a franchise agreement and an FDD Thanks, Will.

**RONALD
GARDNER:**

If I might, Will. I don't think you have to go a lot farther in terms of surveys. And I'm not sure what the one survey Carl found on the internet seems to have deemed it to be credible, because I'm not sure we have any idea how they collected that information.

I don't think you have to go much further, frankly, than looking at the resources surrounding the litigation that exists with franchisees and franchisors to get a sense of how many franchisees feel like they're not getting the information that they need. And in part, because of the FDD and its sheer breadth.

I don't disagree with Carl that people could have lots of different reasons for not reading it, but that doesn't mean that you don't attack one that you're aware of. And you know, when you get an FDD that rolls in at 1,200 pages, I don't care if you're someone who doesn't like to read or someone who is an English major, the reality is that is extraordinarily daunting.

And I've seen FDDs at 1,200 pages. So I don't think that there's any legitimate dispute that the sheer breadth of what the FDD is at now discourages people from reading it. Discourage them from understanding it. You've got to factor into this time frame and the pressure that's being put on a lot of these people to hurry up and purchase.

We've got somebody else looking at the territory, or even, frankly, we don't have anybody else looking at the territory. But we need your answer within the next 14 days. You know, you just can't digest everything that you need to digest in the time

period in which you're expected to digest it and make a reasonable decision.

And so, you know, Carl and I will snipe at each other I'm sure for the next hour. And we've spoken on other panels together. We're good friends so don't take it the wrong way. Neither one of us do, that's for sure. But the reality is that my office is in business, frankly, with hundreds of clients because people were overwhelmed by the FDD or didn't get it.

And there's certainly a better way to do it than the one that we have now that goes back to the 70s when we needed to know that Kenny Rogers somehow endorsed Kenny Rogers roast beef. I mean, the fact that item 18 exists is ridiculous. So this does deserve a hard look at how you can shorten it, make it more succinct, get the more important information up front. It all ought to be done as part of this review.

CARL ZWEISLER: Ron, if I could respond very briefly. I don't want to monopolize the time. But you did mention the number of disputes that arise because of problems with FDDs. We did some research with Westlaw. And over the last three years, we found that there are 42 franchise cases alleging disclosure fraud and/or misrepresentation.

That's 42 over three years. And we did some further research. We found that there were-- that's an average of 14 cases a year. There were 27,000 new franchises opened in 2017. 26,000 opened in 2016. I'm sure there are disputes. But they don't seem like a tidal wave by any means.

WILL MAXSON: Kimberly, I'd like to turn to you now. Ron mentioned these 1,200 page FDDs. Do you have any suggestions for what can be done to potentially shorten FDDs or make them more readable?

KIMBERLY CROWELL: Sure, and thanks again for having me. I think that if we look at the FDD as yet another tool that prospective franchisees can use to do their due diligence, I don't know that the length of the FDD would necessarily matter. I think it's really important that prospective franchisees understand that this is a potential playbook.

This is a potential opportunity for you to learn more about a potential business that you're going to invest in. And I don't necessarily think that just saying, oh, it's too long, I don't want to read it, is a good enough excuse. I think if anything it's providing you with the information to then go and do additional research.

So for example, if in the very beginning of the FDDs it lays out estimated investments. And it provides you with additional notices of where to go via to the FTC website or to speak with counsel on that. I don't necessarily believe that the length is necessarily the problem. It's understanding that there's a plethora of information in there that you need to seek out and find and be able to make an educated business decision on that investment.

WILL MAXSON: Earsa, I'd like to turn to you now. Do you support the use or the addition of a summary document for FDDs. And if so, why or why not?

EARSA JACKSON: Thanks, Will. Thanks for having me. Now, I can appreciate Ron's comment about the length of the FDD and the fact that they are very lengthy documents having prepared and reviewed many of those over the years. They are very long documents. And a summary document might on its face seem like it's a great idea.

But I would caution that there are likely some unintended consequences. If we are encouraging folks to do their due diligence, do their homework, a summary might actually discourage people from looking at valuable information. I think Kim referred to it as a playbook. I think that there's valuable information that the prospect might not get if there is a summary.

They might take the summary as the gospel and not do full due diligence and make an informed decision. I think that a summary document might turn into a summary kind of sales pitch type document. Now, there's obviously some checks and balances if you're in a franchise registration state where someone's going to look at that. But for those brands where no one's going to look at that, I see that as a huge danger not being policed.

And if we are looking at this from a consumer protection standpoint, I do think that there's a possibility that the most vulnerable folks might be in further peril with just relying on a summary document and thinking that that's all the information that they need to make an informed decision. So I think we might fall short on the consumer protection side. So I would not be in favor of a summary document.

RONALD GARDNER: I actually am. I'll tell you, I've been slow to embrace this because of exactly the point that Earsa has made. I kind of got drug kicking and screaming to the idea that

a summary is a good idea for the fear that people might skip the more important stuff. But frankly, as I thought about it and looked at the experiences that we've had in our office and my franchisee represented brotherens, working with some regulators.

The reality is that lots of people aren't reading the whole thing anyway, and some it's probably better than none. The other thing I would say is that I don't think that the FTC should be frightened away from the idea that Earsa's raised here that there might be some nefarious people that use this the wrong way. Again, that would be happening with the FDD as it exists in non-regulated states if it is and probably is.

So I don't know that the risk is any higher with a summary document than it is with some sort of a shorter or longer document or shorter document. The other note that I would make about a summary is that, and again, back to that what the FTC should be thinking about, in my opinion, is it's not like this is uncharted territory.

When we buy-- when you buy securities today, you get a document that has lots and lots and lots of important information. But you get a summary. It can be crafted in such a way that people get the most important information. They get it right up front. They have a sense of what's going on. And it prompts them, if you will, to follow up on one of Kimberly's comments, to do more research and to look further in.

At this point, people open up that FDD, and they get to page 7, and they give up. Because where the information they actually want, there's no way to know where it is. There's no directory. There's nothing that says, you know what you really ought to start with is item 19. You know, you've got to get 3/4 of the way of the document through.

And, oh, by the way, all the people you need to call, they're in the back. I mean, a summary document would do so much to bring front and center the stuff that need to be done, that needs to be used for consumer protection. The same way it works in our sister industry with respect to securities. And so again, I've been slow to get there, but I do embrace the idea of a summary document at this point.

WILL MAXSON: So Ron, are there any specific things you would suggest putting in a summary document?

**RONALD
GARDNER:**

I think we-- I think we'd have to think hard about that. I think that the key information from items 5, 6, and 7. What's your upfront and how is it going to run? The key information probably from item 19. What do people-- when they spend this money-- what kind of return are they seeing as a generalized statement.

I certainly think you'd want to know the description of the business. The key sort of passage, if you will, out of item number 1 so people know what it is they're buying. I don't have a specific-- this is for sure. I've never mapped it out. But those of us that work in the regulatory area. The NASA folks are well equipped, I think, take this up.

Or some group that the FTC appoints. And Dale, I'm sorry that I might be volunteering for something, that take things up to craft something that I think the industry would probably widely accept if they could actually see what it is. Part of, I think, of the hesitation that people have is we don't know what we don't know about what that might look like. I do think we could get to something that we would all likely embrace as, yeah, this is a pretty good idea.

**KIMBERLY
CROWELL:**

Well, if I could jump in too and add a couple just from the franchisee's perspective. I think-- and I've gone back and forth with the idea of a summary document. And I agree with Earsa. I don't necessarily agree that the summary document would be the way to go for the reasons that she stated. That it might deter prospective franchisees from actually diving down deeper.

However, if there was some sort of way to direct some of the high-level areas that a prospective franchisee would want to know about. Some of the ones that Ron mentioned. Other things come to mind like retrofit requirements, terminations, default, transfer. I think if there was a way to pull not just some of the legalese, but also from a practical standpoint, what would a brand new franchisee or someone looking at investing in a franchisee.

What are the 25 top items that they mostly care about and finding a way to incorporate that. Or at least making sure that they have access to it fairly quickly so that they can get the answers that they need and then be able to make a choice on whether they want to invest.

CARL

Well, if I could comment, first of all, I think Dale and his NASA committee should be

ZWEISLER: commended for the new state cover page requirement that went into effect last year. And it does exactly, I think, what Ron was suggesting, which is explaining frequent questions and where to find the information in an FDD and why it's important.

And I think that is a much better approach, frankly, than the summary. And the principal reason for the summary, and there are different ways to do it, and I've criticized some of them in a law review article where there was a summary FDD proposal by another lawyer. But I think it's deciding which thing is most important.

And we've heard Ron describe a series of things that he thought should be in a summary. We've heard Kimberly describe a series of things she thought should be on the summary. And they don't overlap as far as I could tell. And pretty soon, you're getting into the full blown 23 items of the FDD. And in my opinion, and it is my opinion. I share Earsa and Kim's perspective.

If you have a summary, an executive summary, this is the important stuff. If these are the risk factors, well, that's what I need to focus on. And god forbid, I have to read the other 400 pages in this thing. That doesn't make any sense. Nobody's going to do it. They don't have the patience. So I think the summary, as good as it sounds, probably isn't going to get everybody where we want to be in this disclosure process.

DALE
CANTONE: I think the fact that we're talking about a summary document illustrates the fact that there is a real concern about prospective franchisees reading the entire franchise disclosure document. I think that is a real concern. The length of them have increased a lot since I started doing this 30 years ago.

Carl, you've been around longer than I have. Probably Ron, you and I are about the same. They've gotten bigger over the years for all sorts of reasons. Having said that, I'm not quite there with the summary document. I also have concerns. It might be one of the few times I agree with Carl over Ron. Although I understand exactly where Ron is coming from.

In some ways, yeah, if we could identify-- if we were ready to say, clearly they're not going to review the entire disclosure document. Certainly a summary document is better than nothing. I'm not ready to give up on the entire disclosure document or

some variation of the disclosure document that I suspect could be improved.

And the reason for that is because in our law enforcement experience, you can never tell what part of the disclosures are a material piece of information that affects the franchisees decision or prospective franchisees decision. What part of the disclosure document would you want to cut out?

I mean, we've had people say that they've really relied on the territory disclosures or the trademark disclosures or the required purchases or complain about the fact that they didn't read the disclosure document, but it was clear about the amount of rebates and kickbacks, they call them, that the franchisor is getting. So I don't know that it would be possible to distill all the information that's in that franchise disclosure document into a summary document.

Although I have to also say that as much as I appreciate Carl's shout out to the state cover pages, the state cover pages really are not a replacement for the type of summary disclosure document that I think Ron was referring to. I think the fact that we adopted these new state cover pages is a reflection of the state regulators concerned that people are not disclosing--

They're not reading the disclosure document and that many prospective franchisees find that document intimidating. So the state cover sheets are kind of a way to assist a prospective franchisee to maneuver through the document by including a page. How to use the disclosure document.

And a page that has realistic, practical information about the one sided nature of the franchise relationship that a lot of franchisees don't understand until it's too late. And then there's a page on risk factors that, of course, are imposed by state regulators.

But I don't think anybody should conclude that that is a replacement for the type of summary disclosure document that I think we're talking about. Again, I'm not quite there. I see the utility, but I think that if we can get franchisees to read the entire disclosure document, that would be the ideal. Doesn't happen currently.

[INTERPOSING VOICES]

EARSA
JACKSON: I think the real concern is how we kind of demystify that document. There is a resource that's been around for quite some time. And that's the consumer's guide to buying a franchise. It's referenced in the cover of the FDD. Most people don't know that-- prospects don't know they can easily get a PDF of that document.

That is by far the most detailed road map as to what's in that FDD. It's not specific to a system. But that's a resource that's out there. And we might consider whether there are some tweaks that might be more beneficial to address this. Because I think the real issue is how to demystify that document. Ron referred to 1,200 pages.

It is a lot of information but giving the prospect the resources to digest it, might be the way to focus here. Because I think, as we've pointed out, once you start trying to figure out what are the most important things for the summary, some things are going to be more important for prospects than others, depending on the system or depending on the region. So giving them the resource and equipping them with how to dissect that document may be a better focus.

RONALD
GARDNER: Well, and I want to make one thing clear. I'm not actually advocating for jettison of any parts of the FDD. What I was really talking about is the type of executive summary that you get in a securities prospectus. You still get the whole prospectus. You just get a summary upfront of what they see as the key information.

And so I didn't mean to suggest, because I kind of heard Dale answering like that was what I was suggesting, I don't mean to suggest that we get rid of the FDD and all of the information that's in there. I am suggesting we might consider an executive type summary upfront with the most key information so people can get that quickly.

DALE
CANTONE: And I guess, Ron, my concern is it's hard enough for us to get franchisees, prospective franchisees, to read the disclosure document now. And I'm sure if we had a summary document, it would be that much more difficult to get them to focus on the entire disclosure document if they did have an executive summary.

RONALD
GARDNER: Exactly why I told you I was very slow to come to this opinion. I don't disagree with that that's a risk.

WILL MAXSON: So we've heard both sides of this the summary debate. And obviously different

minds can have different opinions on this issue. But Ron, let's say you don't have a summary document. Would there be any utility in reorganizing the FDD to put the most important items up front so that if someone wasn't going to read all the way through a 1,200 page document, if they read at least a certain portion at the beginning, the things that they hit first are going to have the most utility to them in making their decision about buying a franchise.

**RONALD
GARDNER:**

I think so. I mean, and frankly, my view or my belief here is it could be reorganized in such a way that not only will they get the information they're probably looking for up front, but it would encourage them to keep going because then the other issues come to bear. I mean, right now, you get to item three, and suddenly depending on what system you're in, you have nothing there.

Or literally, hundreds pages in one system that I'm thinking of, a list of their litigation. I mean, you're into item three, and you're already 100 pages in, and you're reading stuff that has really nothing to do with the things that you are wondering about. So to me, I think I would reorder. I think I'd go, just off the top of my head, 1, 2, 5, 6, 7 because people want to know how much it's going to cost me to in

19, how much am I going to make? Then I think springboard from there. What do I get? I'd talk about territory. I'd put in 12. How does purchasing work? 8. I mean, I think you could come up with a logical flow about the way people think about getting into business. You know, you get interest in how much it costs and then how much can I make?

But how does it really work? I think you could take the items that we have now and organize them in a fashion that not only gives people who aren't going to read as much the more critical information up front. But like I say, if you model about the way people approach buying a business, would logically lend itself to, OK, now I'll read the next section because I'm now wondering about that.

I can see how much it costs. I'm still interested. I could see how much I could make. OK, I'm interested in that. How about what does the business look like? What kind of territory do I have? Who do I have to buy products from? I mean, there's lots of great information.

But it's like someone took a shotgun and threw it up on the wall, and you have to go pick it out. And particularly when you get into those longer documents, finding it is just-- it's brutal. So I do think a reorganization, at a minimum, is in order here.

WILL MAXSON: So you mentioned getting 100 pages in and maybe some of the stuff you've read in the first few items maybe isn't as useful to you or isn't all that useful to a prospective franchisee. I guess the follow up question would be then, are there things that should be cut that just aren't useful and just adding pages and make it less likely that a prospective franchisee is going to read the whole document because it's just too long?

RONALD GARDNER: You know, my struggle-- and this one is-- I've already said, I think item 18 ought to go away. I mean, but for right now, if there's stuff that doesn't need to be said or it's minimal, it doesn't take up a lot of space. I think the challenge here is the ancillary documents. I mean, people do need--

When you get into a system where they have three different versions of their lease a writer, and five different versions of their asset, what do the building plans look like. And then they just append all of them. I mean, not all of them are relevant to every franchisee. But every franchisee gets a copy of every one of those.

That's to me where the real problem is is in the current regime of saying we're going to convenience for the franchisors, just append anything they might ever sign. Compared to what is it this franchisee is likely to have to sign. There is an enormous imbalance. And I think some examination of how do you fix that fixes-- gets you some of the issue-- taking care of this issue-- in a way.

Because it's those agreements that have three different unit types, and they have their area development agreement as part of their FDD. And they have their multi-unit agreement, as well as their single-unit agreement.

And all the lease arrangements that are different for each one of those sections. And suddenly, you get this behemoth of a document. That's where the real challenge with the breadth of the document comes in terms of sheer page numbers from where I sit.

[INTERPOSING VOICES]

CARL Go ahead, Dale.

ZWEISLER:

DALE I was going to say, I just quickly-- I totally agree with Ron on it. For this 1,200 page
CANTONE: documents, and there are quite a few of them, the bulk of that text is not the 23 items of the FDD. The bulk of those are the ancillary documents. So one idea is to separate those 23 items, some of which are pretty lengthy. But really when you see these intimidating, thick documents, most of it is the ancillary documents. Ron is absolutely right.

CARL But Dale, let me ask you this question. I prepare FDDs. And so we have clients who
ZWEISLER: want to register in Maryland or have one universal FDD that they can use to disclose any prospect. When we're preparing those, we don't know who the prospects going to be, usually. We don't know which of those contracts they're going to sign.

DALE I'm not saying you don't give them to them, but maybe not-- separate from the rest
CANTONE: of the disclosure.

WILL MAXSON: Kimberly, we've talked about these sometimes very long, sometimes complicated and hard to follow, FDDs. In your real world experience as a franchisee, do most prospective franchisees hire an attorney or an accountant to help them understand these documents?

KIMBERLY Well, in my experience, the first-time franchisee, prospective franchisee, more than
CROWELL: likely is probably very apprehensive about hiring an attorney because they're worried about the cost. And so what I've found is they will reach out to another franchisee or some business associate to try to get some initial help on just understanding the operational side of the business.

And then if I'm speaking to them as a multi-unit operator now, I would say, go and speak to an attorney about more of the legal issues that you might face. But really understand how the business operates first if cost is an issue. Get a handle on how to operate the business and then go to the attorney for additional consultation

WILL MAXSON: So obviously this workshop is in English, and most FDDs are in English. Dale, I'm curious, if in your experience, franchisors are marketing their franchises in

languages other than English?

DALE

CANTONE:

There are franchisors that market their-- well, they market their franchise to predominantly, or a significant percentage of people who do not have English as their primary language. And I think part of that is reflecting a reality of franchising that we're kind of glossing over, which is franchising covers such a huge variety of businesses.

From the multi-unit operators, the big conglomerate franchise systems, to very low cost franchise systems where-- by the way-- no one ever has an attorney help them. So there are systems that market directly to people who may not have English as their first language. I can give you several examples.

We've seen that happen in nail salon franchises. Bubble tea. There's not that many of them, but often they're targeted towards the Asian community franchisee. As a matter of fact, on my desk today that I was looking at a bubble tea agreement that was written in Chinese.

And then probably, maybe the largest segment of this industry that targets to a lot of non-English speaking people, is the janitorial cleaning franchise system. And if you look at the list of franchisees in those systems, there are a lot of recent immigrants. People who do not have English as their first language. And so I do not believe there-- I don't know.

I've never seen a disclosure document in anything other than English. So I do not know how those are being disclosed, and how the disclosures are getting to the prospects. And I fear, based on some of my experience, that a lot of the people who buy into those systems simply do not read the disclosure document at all.

WILL MAXSON: So do you think if franchisors were required to produce their FDD in the language in which they marketed their franchises, that would incur much additional costs for those franchise owners?

DALE

CANTONE:

I'm afraid it would. It would incur some additional cost. And just the cost to translate a document. Many years ago, my office and yours worked together on a consumer publication about the janitorial cleaning franchise industry. And it was costly to translate that into Spanish. And we had hoped at that point to translate it into other

languages.

But it never went forward for all sorts of reasons, one of which was the costs to translate it into different languages. So that's clearly a cost. But I don't know what you do if you are primarily targeting or selling to people who don't speak English. The disclosure document doesn't work for a lot of those. And so I don't know what you do. But it definitely is a cost. And part of our concern is that cost might be passed on to franchisees in the system anyway.

**CARL
ZWEISLER:**

Dale, I can also foresee problems. I don't know how many people in your office or your examiners speak multiple languages. And I know we have very few, relatively speaking, within our office. If we had to prepare franchise agreements in Spanish, the most common additional language, who's going to review them.

**DALE
CANTONE:**

I'll read that one for you. Actually, I think the other way to work it is to have maybe some type of certification that a professional translation service translated the document from English. Because you're right. I mean, we wouldn't be able to do that. That's the only way I would say that way workable. But of course, that comes at a cost.

**CARL
ZWEISLER:**

I can say-- share experience. I do quite a bit of international franchising work. And I remember particularly in South Korea, which does have a franchise disclosure and registration requirement. But their our FDD is not nearly as complicated as ours. Although it will keep moving in that direction.

The translation costs there exceed all of our legal costs every time we prepare a filing. And that may be a very substantial additional expense that might deprive a lot of these non-native English speakers of a franchise opportunity.

WILL MAXSON: If there were a requirement that they produce the FDD in the languages which they market these franchises, would that have any impact on state franchise registration requirements?

**DALE
CANTONE:**

I think that they certainly would because we have to review a document. And as Carl pointed out, most of us only speak one language. And so the only way I could see that happening is if we get a certification that a Spanish or some other language is being-- the disclosure document is in a different language. We have the-- we have

the comfort to know that it is actually accurate representation of what was registered in English in the states.

WILL MAXSON: Kimberly, are there technological features that might make the FDD more readable or more accessible to franchisees?

KIMBERLY CROWELL: Sure, I mean, I think it's important that we adopt newer technologies in terms of having the ability to look at it on your mobile device. I think having a search feature either potentially having the ability to write specific questions that will lead you directly to different items within the FDD I think would be helpful as well.

For the FDDs that I've looked at, I haven't seen any. Even something as simple as a hyperlink from the table of contents to be able to go directly to that particular area. As Ron mentioned, the 1,200 page FDD, certainly, you don't want to have to scroll and try to figure out what page that is at. So I think those would be just some very simple adjustments to allow for better readability of the document from a technology standpoint.

RONALD GARDNER: If I can link that back to something you asked about earlier, Will. And that's the review by attorneys, or why people don't go to attorneys. I do think what Kimberly is suggesting is absolutely, I think, the next step in the evolution of how the FDD should be delivered. I mean, there's no question that it should come electronically.

There's no question that it should have hyperlinks. All of that apps should exist because that's the way people digest their information these days. I will say that I do think one of the reasons that people don't go to lawyers is because they get that document that is this big.

They're terrified of the cost, which is ironic in a way because most franchisee lawyers do that on a very low-cost basis relative to what these people are looking at potentially investing in their franchise. But that is-- that is what it is. I do think that having it more technologically navigable will-- I think would have two benefits.

One is the obvious one, which is people can maybe find what they're looking for. And I think the other one is that it would cause them to ask more questions. One of the things-- The other thing Kim talked about earlier was getting people to do more due diligence, to dig in and being able to find stuff, whether it's because you've got

an attorney that's pointing you to it or because you stumble on it by yourself, is something I think is probably in everybody's best interest here. This might be something we can all agree on. Get people to digest more information is a good thing.

CARL I agree with Ron.

ZWEISLER:

[LAUGHTER]

RONALD I knew it would happen.

GARDNER:

EARSA I second that, Carl. (LAUGHS)

JACKSON:

WILL MAXSON: So in your experience, are franchisors not doing these things-- hyperlinks, and things like that-- because they think that they're not permitted to do it by the regulations or because they're intentionally trying to make it difficult to manage the document and to increase time or costs or whatever it is to review an FDD.

RONALD Well, I'll let Carl and Earsa, who work for the franchisors, answer. I would say my guess is because you've heard them say it a couple of times already. Things that increase cost. I mean, increasing the technological application to your FDD does increase costs at least on the front end in the short term.

I don't think anybody-- I shouldn't say anybody. I don't think most franchisors are trying to discourage people from reading. I don't. But I do think that the structure, and that the breadth does discourage it. And we've got to work on fixing that. I'll let Carl and Earsa speak from the real franchisor perspective on this one.

CARL And I would consult with Dale, but my understanding of the rule is that you're not allowed to have hyperlinks inside the FDD.

DALE I think the FTC rule in 2007 prohibited external hyperlinks. When I review these documents, I'd like to see, certainly, a hyperlink from item numbers. I think there's nothing more helpful than that to have on the side of a document where each item number is and be able to go to it. I mean, that's a simple-- I don't think that type of

hyperlink is prohibited by the rule. But I don't see that a lot. I mean--

RONALD Like an internal hyperlink.

GARDNER:

DALE Internal, yeah. It's the external hyperlink that isn't allowed.

CANTONE:

WILL MAXSON: That leads me to the question that we got from the audience. Do locked PDFs inhibit the review of FDDs?

DALE Oh, I think that's a good question. I mean, I frequently-- when I review-- they're

CANTONE: talking about like searching terms. I mean, I've had FDD where I'm trying to search on terms to find something. And you cannot do that.

And I find that really a problem. I think it's certainly easier if you're searching a particular terms to be able to find it. In the FDD, it's interesting. In my experience, you know, about half of them are locked, but I don't know why.

WILL MAXSON: Carl, do you have any suggestions for how an FDD might be accessed more easily through less traditional formats? There was mention earlier today about on iPhones or cellular phones or iPads or different documents like that. Are there any changes we could do as we're thinking about updating this rule that was drafted a while ago as the technology improves that would make it easier for people to navigate an FDD?

CARL
ZWEISLER: Well, I think mostly the things that we've already talked about. Using hyperlinks, allowing or encouraging franchisors to post their FDDs online, and make them accessible to franchisees early on if they want to do that. I don't know of any particular thing that makes reading a FDD on a phone any easier.

I know I can't do it. But if that's what people choose to do. So I don't know the answer to that. But I think I do have an answer to Dale's question about why we have locked PDFs. And I think that's really the protection that the franchisor wants. It does want to have the document manipulated once it's been delivered.

I mean that would be the case when it's delivered to a prospective franchisee. They don't want to show up in somebody's office and have something-- version of a

document-- that's not what they authorized. And that may be the reason that you're seeing them that way too, Dale. Well

DALE
CANTONE: I certainly appreciate that. That's a legitimate concern. I just didn't realize that prevented it from being searchable.

CARL
ZWEISLER: I think that's what we really need is. It's not whether it's locked, it's whether it's searchable.

DALE
CANTONE: Yeah.

CARL
ZWEISLER: I suffer from that too.

RONALD
GARDNER: I think the idea of a hyperlink could really address not only navigation of the FDD itself, but it may help with the issue that I raised earlier about finding the relevant and appropriate ancillary documents in this 1,200 page morass that showed up. I mean, one of the things that Earsa-- I think it was Earsa that said we don't know which prospect is going to get our FDD.

If it was Karl that said that, I apologize. But I think it was Earsa. And to which I say, well, it seems to me you can do one of two things. You could break this process into two steps. Here's the FDD if you're interested in going forward. Here are the documents you are going to need to sign. This is the copy of your lease, and your lease writer, and all of the other things.

Alternatively, if you want to avoid that second step, then you give him a cover letter that says, OK, here's the whole document. It's all together. We're not breaking it up for cost reasons. But given your situation, if you're going to be a single-unit operator, you should go to these links. If you're going to be thinking about a multi-unit, go to these links.

If you're to rent, you need these links. If you're going to own, you need these links. And you could use that hyperlink technology as a way to direct people to the stuff that they actually need to read, rather than, again, wading through this 1,200 page unsearchable monster.

CARL I think we could think about how that might work and particularly if the FDD is
ZWEISLER: delivered online or accessible online. It's there if anybody wants to read it. But only as you get closer, whether it's the seven days before a signing or at some earlier time, the parties could agree on which documents would have to be signed. And they would certainly be made available to the prospect.

WILL MAXSON: And so what you talking about, Ron, I think you were talking about internal hyperlinks, right?

RONALD Yeah, well, probably. I mean, the question is if you still include all those documents
GARDNER: in the single document, then yes. They're internal. But you could do it as if you were-- I'm not sure I'm there on Carl's idea that you just post it somewhere on the internet. But if you do, then they don't have to necessarily be internal.

You can direct from the FDD itself to somewhere else on the franchisors website where they have the relevant leases or documents for single-unit operators or for multi-unit operators. So that really sort of depends on how it gets structured. But I'm not talking about linking to anything that's outside of what would normally be in these 1,200 pages. So I think, well, yes. Internal in terms of what they're getting now. Not extraneous information beyond that.

CARL Will, I know you want to conclude this, but I'd just like to bring up one point, kind of
ZWEISLER: to refute something that Theresa Leets was suggesting earlier, which is that the franchisors are all powerful. They drive the bargains, et cetera. Last time I looked at the statistics, most franchise owners had 50 or fewer units.

I saw a recent survey that said most franchises started over the last four years had one or zero units. We're talking most of the people are going to be subject to these rules. And any changes we're talking about are truly small businesses that are trying to comply with the rule in good faith. And we've got to be very careful about any changes that we make that might unnecessarily add costs to doing business in their ability to create jobs for prospective franchisees and their employees.

DALE But by the same token, you can't refute that most franchise agreements are very
CANTONE: one sided in favor of the franchisor.

WILL MAXSON: With that, I'm going to end it because we've reached our time at 4:30, and we're not

going to have some cross-panel debating because that could get a little tricky. But thank you all very much for being here and for helping educate everyone about these franchise issues. We really appreciate. Appreciate your time. This has been very useful.

I hope everyone sitting at home or in their offices will be quietly clapping for you right now. I know you won't hear it. But cosmically, maybe you'll feel the good vibes. So with that, we're going to turn it over to Lois Grossman who's the associate director of the FTC's division of marketing practices. And in just a moment, she'll be delivering the closing wrap up for this workshop. Thanks very much.

RONALD Thanks, Will.

GARDNER:

CARL Thank you.

ZWEISLER:

EARSA Thank you.

JACKSON:

LOIS
GREISMAN: Good afternoon, everybody. My name's Lois Greisman as Will said. I head the division of marketing practices at the FTC. That division has primary responsibility for enforcing and promulgating the franchise rule. And it's my honor to close out today's workshop. And I'm going to begin to do that by extending thanks, of course to the speakers, and to my FTC colleagues who made this possible.

Many of them you've seen, but not all. So I want to give a special shout out to Crystal Peters, Arissa Henderson, James Murray, Bruce Jennings from the FTC's event planning and media teams. Paralegals Leah Hebron and Kate Moody. Colin Hamson from our Bureau of Economics. Kenny Wright from our general counsel's office.

Jun Chang and Leslie Phair from our division of Consumer and Business Education. And both Nicole Drayton and Julianna Greenwald in our Office of Public Affairs. So this is not really a close out since, of course, the record stays open. I just want to make a couple of comments on the engaging panels that we've had today. And what I'll refer to as very diplomatic disagreement on some of the issues.

And as Representative Hern opened with, no FDD is perfect. So whether or not to mandate financial performance representations has been an issue since the get go. Interesting changed since 2007, when about 20% were providing FPRs to some 66% these days. Discussion at the FPR is the most important item.

And also, a slightly different view, expressing concern about whether or not the FPR really is the breaking point. And some agreement that the shifts in cost benefit analysis have changed given changes in technology. But then we moved over to discuss disclaimers, waivers, integration clauses, questions about is there a bright line.

Is there a way to distinguish between explanations and disclaimers? And what is that line? Who do integration clauses favor? What are the questionnaires benefit? Is the main purpose of these kinds of provisions for the franchisors to defend against a lawsuit? And at what point do they become problematic?

And finally, the last panel. Pros and cons of the FDD format. Good discussion of a summary document that arises out of concerns about whether the FDD is a playbook, or is it a 1,200 page monster that perhaps may or may not be tameable by using hyperlinks.

So to sum up there's absolutely no shortage of challenging interesting issues and ongoing provocative discussion. Please keep in mind that the record is open until December 17th. So again, thank you all for joining us this afternoon. We look forward to hearing more from you and please stay safe and healthy. Thank you very much and take good care.