

>> Richard Quaresima: And the second panel for the day is going to talk about -- discuss some of the legal and policy implications of COPPA's inclusion of an actual-knowledge standard for general-audience operators. So, I would first like to introduce our panelists. Starting down here on my far right, we have Becky Burr, who is a partner with WilmerHale. And --

>> Mamie Kresses: It's not on?

>> Richard Quaresima: It's not on?

>> Mamie Kresses: It's on. If you turn your head, it -- that's on.

>> Richard Quaresima: Okay, and --

>> Becky Burr: That's much better.

>> Richard Quaresima: Better? Okay. Next to you, Becky, we have Dr. Gwenn O'Keeffe, MD, and she is the C.E.O. and editor-in-chief of "Pediatrics Now." And then we have Phil Terzian, senior director of government affairs of Activision Blizzard. Coming down to the left of Mamie is Phyllis Spaeth, associate director of the Children's Advertising Review Unit at the Council of Better Business Bureaus. Then we have Guilherme Roschke, a graduate fellow from the Institute of Public Representation at Georgetown University Law Center, and then Jeffrey Greenbaum, partner at the Frankfurt Kurnit law firm, and then Christine Jones, who's the general counsel of The Go Daddy Group. So, right now, I think we're going to take a little -- go down a little bit deeper into specific types of operator, a specific type of operator covered by COPPA. We've talked about that COPPA covered websites and online services, but there are two different websites and online services that come within that, those service that are directed to children or operators that have actual knowledge that they are collecting personal information from a child. And this panel will deal with that actual-knowledge standard. So I'd like to open it by just sort of beginning, back to the original purpose and the original passage of COPPA and try to maybe get a little feel for how

Congress settled upon the actual-knowledge standard for general-audience operators, as opposed to any other standard. So I think I'd like to begin a little bit with Becky on that.

>> Becky Burr: Thanks. We've been talking about gray areas, and I think we all, sitting around the table in 1997 and 1998 talking about this, knew there would be gray areas and, specifically, that there were sites that would be interesting to adults and interesting to children, as well. And the question is, you know, what are you gonna do with those sites? The actual-knowledge standard was adopted was -- replaced the original draft line, which was knowingly in Senator Bryan's original draft. The language was "knowingly," and it was replaced with the "actual-knowledge standard" in committee, in the Senate committee, as a result of the hearings. The two standards are very different. Legally, the knowingly standard will allow you to consider information, inferences, information that you should have known, whereas actual knowledge is a direct and clear knowledge of a fact, as distinguished from constructive knowledge. So it was a very deliberate move on the part of Congress to distinguish the standard.

>> Richard Quaresima: Guilherme, do you have anything you'd like to add to that?

>> Guilherme Roschke: Yeah, I'll just add that, as originally introduced, the bill only had the "directed at" section. It was limited to that. Consumer groups then proposed language to cover websites that know or should reasonably know they're collecting information from children. And then, in the negotiations, the industry retorted with, you know, the actual-knowledge standard. And so that's how we've gotten to the actual knowledge.

>> Richard Quaresima: Okay. And...how has the requirement of actual knowledge, as opposed to a constructive knowledge, affected the development of various business models? And I'd like to sort of make this a kind of very broad-based question and get a lot of input from the panelists. I think I'll begin perhaps with Jeffrey, and then we can, you know, sort of work our way through.

>> Jeffrey Greenbaum: You know, obviously, I think there are certain times, you know, when advertisers, marketers -- they want uncertainty. They want flexibility. They want the ability to look at all the facts and circumstances. And there are other times when you need certainty, that it's

just virtually impossible to build a business, to plan what you're going to do without a level of certainty that you know that you can comply with. And I think that the actual-knowledge standard does that. The way that we've got a standard right now, it is very clear. Advertisers or operators know what they need to do. They know when they have actual knowledge and they know when they don't, and it's allowed -- it has allowed businesses to develop. And I think that, as the discussion will show, that, you know, many of the websites available today, if we had a broader standard, if we had a "knew or should have known" standard or had some sort of constructive-knowledge standard, I think what we would find is that it just really wouldn't be workable, that, regardless of whether you have some kind of age screening or not, I mean, the whole notion of that -- you know, you're responsible for the content of everything that's on your site, you know, and knowing what the possible information that could be on there is just simply not workable and wouldn't work for the kinds of websites that we have today.

>> Richard Quaresima: Anybody else? Becky, do you want to...

>> Becky Burr: I just want to say that Congress made a, you know, a decision in passing Section 230 to ensure that operators of websites would not necessarily be responsible for everything that was on their site. That was designed to promote innovation and uptake of e-commerce, and the actual-knowledge standard supports that.

>> Christine Jones: And could I just say -- as the evil website operator on the panel, we're so glad they did. [Laughter]

>> Richard Quaresima: But why is that?

>> Christine Jones: Let me say, at the outset, before I got up here, I checked in with foursquare, and I noticed that at least four others in the room have done the same. I sent out a geolocated tweet to tell people I'm in the room, and I also didn't mention the fact that I'm over 13. So, we'll see if anybody has actual knowledge when we leave here of what we're doing, information we've collected, and whether or not there are children in the room. Did that just free you, Professor? We'll sign you up with a Foursquare account before we leave, I promise.

>> Male Speaker: Um.

>> Christine Jones: The reason we're happy about the fact the actual-knowledge standard is actual knowledge and not constructive knowledge, knew or should have known, or some lesser standard, is because -- let's face it -- businesses are in business to make money and they want to push the envelope. Now, we're very careful at Go Daddy about what information we collect and how we use it, but we have 41 million customers who maybe aren't quite so careful, and we hear every time they do something wrong. And if there weren't, as Becky pointed out, such a specific intent to make the standard as high as it is, we would have a lot more violations. And so I say a little bit tongue-in-cheek that businesses are happy about the standard, but, really, honestly, it has been a watermark, a benchmark that people can use to say either, "I knew," or, "I didn't know, and don't ascribe knowledge to me if I didn't have the actual knowledge," so it's been something that people have really backed up against to form business models to make more money.

>> Phil Terzian: Yeah, I'd like to, you know, reiterate the certainty aspect and how that's -- you know, the predictability of that is very helpful for site operators. I mean, the actual-knowledge standard does provide the certainty. It allows you, you know, at point in time, such as when a user is registering, to make a quick, easy decision as to whether or not that person is under 13 or not. A should-know standard -- more murky, more uncertain, would have to be, you know, out there would be hard to follow, I think, for the, you know, huge amount of businesses that would have to then adhere to that.

>> Richard Quaresima: Gwenn, do you have any thoughts on that?

>> Gwenn O'Keeffe: You know, I think, when you look at actual knowledge in children, it's a sticky point because there is a strict definition right now of actual knowledge, but we know children are on these sites. So I'm very uncomfortable with using just actual knowledge from a -- and we'll get to this more in a little bit -- but, you know, I think that when you look at the Go Daddy and the Foursquares -- the Foursquare example that you just gave, I'm not comfortable, you

know, because I think it's -- when you look at businesses and what they have to do, it's, I think, incompatible with what you have to do to keep children safe online and protect their privacy.

>> Richard Quaresima: Phyllis, let me turn this over to you for a minute. And I think, in some ways, I hear a lot about certainty, but I'm not hearing a lot of specifics about how some of the business models actually have developed, and what is the specific business model? I would like to try to talk about that, so, maybe even in relation to figuring out what some of the models were beforehand that you saw at CARU, versus the ones we've got now.

>> Phyllis Spaeth: By the way, I'm not wearing my bulletproof vest. And I feel like, except for Gwenn, I'm in a real majority here. So let me just start by saying that I'm from the Children's Advertising Review Unit, which is the self-regulatory arm of the children's advertising industry, and I think we were even a little ahead of the game when it came to online media because, back in 1996, before I was even born, CARU came up with self-regulatory guidelines on interactive electronic media, which, at the time, had the intent of covering websites directly, you know, intended for children or targeted to children. And I came to CARU in 2000, and it was very clear, even at the beginning, that there were lots of websites that children were going to be going to, and I'm not talking necessarily about general-audience websites. I'm talking about websites that were made for teens. And what was interesting is, even before then, there were websites that had within their names "preteen chat," "kids this," "preteen that," so, like, somebody knew somewhere that they were having children below the age of 13 there. And somewhere, I believe, in 2001, we changed our guidelines to come up with what we call our "reasonable-expectation standard." And what this says is our guidelines cover websites that are directed to children under 13 and those where there's a reasonable expectation that a significant number of children will be visiting. And we -- in using this, we've decided that, if there is a site that has "teens" in its name -- or let me step back a second. What I think any child psychologist or parent can tell you is that children model up. Every 10-year-old, especially girls, wants to be able to do what the 15-year-old girls are doing. And if there is a rock star, you know, or any kind of pop icon that 15-year-olds are interested in, mark my words, 8-year-olds are, also. And so we decided we can't just let all these teen websites, you know, out there and, you know, just doing this little "don't ask, don't tell" thing so that everybody is free and clear. So, instead, with the reasonable-expectations standard, we were able

to look at sites and say, "Okay, what do you have to do now?" If there is a reasonable expectation, it's not that hard. Just do one neutral age screening so that you ask people that want to register for their age in a way that doesn't tip them off as to what age they should be, so that you can ask for a date of birth. You can have a drop-down menu from which you can pick a month, date, and year of birth, but you can't say right next to it, "You have to be 13 or over to register." Neither can you then, when a child says that they're 10 years old, can you have a screen that comes up saying, "Oops, you're too young." You know, "Go back and re-register," or just say, "Oops, you're too young," and then the kid just presses the "back" button, and there she is. She changes her age, and she's in. And so that the third part of this is you have to have some kind of a tracking mechanism to stop a child from going back and changing their age.

>> Richard Quaresima: I think, Jeff -- Jeffrey, you had a commend on that.

>> Jeffrey Greenbaum: I had a couple things. Yeah, I mean, first, I don't think you need to worry, Phyllis. I don't think you need a bulletproof vest.

>> Phyllis Spaeth: I know.

>> Jeffrey Greenbaum: I think that it doesn't matter where you sit. I think that people are concerned about children and are concerned about protecting children, but it's about choices.

>> Female Speaker: That's right.

>> Jeffrey Greenbaum: And everything we do is about choices. I think of my son in the playground and deciding which thing he's allowed to go on and, you know, do I let him go on the small slide or the big slide? Can he climb up the ladder himself or not? We're constantly making choices, and some of them are difficult to make, and these are just more difficult to make. But I think that, you know, the reasonable expectation that you're talking about is an interesting one. I just don't think it relates to the actual-knowledge standard. I think it relates to the directed-to-children standard, and I think that it may be that, in today's environment, we have to look at, what does it mean to be a site directed to children? And that is something that may require some further

exploration because it may be that "directed to children" meant something very different. And certainly, in other contexts, you think about, you know, when we've had concerns about a child audience, there's a big difference between directed to children and the percentage of the audience that is children, and it's one of those difficult issues that we've struggled with in other contexts, but I think it may be that, you know, it's not about actual knowledge because I think actual knowledge, at least, gives someone an ability to plan their conduct. I think that, on the other hand, if you relook at, perhaps, "directed to children," you could make decisions about the size of the audience, things like that, things that give, you know, operators certainty in the way that they proceed. You know, finally, on the neutral-age-screening thing, I think that you can't ignore, one, the costs associated with that. I mean, it does require -- it does require operators to do additional things that have a cost, but, also, it doesn't change anything, whether you are directed to a general-interest website, whether you're directed to a general-interest audience and you don't age-screen or whether you do neutral-age-screen, you still have a website where people are still, you know, giving you information, which still raises the same questions. So I don't think that solves the problem when we're talking about how to address the actual-knowledge issue.

>> Phyllis Spaeth: Well, hold on one second. There are several things I have to answer there.

>> Richard Quaresima: Okay, but we need to be quick 'cause we need to give other people an opportunity to move on.

>> Phyllis Spaeth: Okay. I'll be very quick. Okay, number one, I don't think we should get into semantics here. I'm talking about the actualities of the way we work, so that I don't care what you call it, like, which rubric it fits under -- we do need to take care of children, and I also think we need to go back to the purposes David Vladeck started off with. The purpose of COPPA was twofold. One had to do with marketing to children, gathering information from them. The second part of it was a safety interest. And I will tell you that, when I first came to CARU, most of the websites that we looked at, I mean, not only am I a Luddite, but I am really old-fashioned, and I couldn't believe the sex that was going on in chat rooms. So all I'm saying is there's a real interest. You know, we're looking here to protect children, and that's it. Everybody else, go on.

>> Mamie Kresses: Becky.

>> Richard Quaresima: Becky.

>> Gwenn O'Keeffe: So, I think -- I think all of us want to protect children, although I have to say I think the congressional purpose of COPPA was to prevent the use of manipulative ads and unfair and deceptive practices. It wasn't a child-safety law. But, having said that, my problem with the -- what I think the actual-knowledge standard is useful -- is because I think verifiable parental consent is too expensive to get, not putting up the age screen -- that's pretty easy. I don't think it costs that much to put up the age screen. But what it does is it teaches kids to lie. So you don't change the number of kids who are on the site -- it's still a lot of kids under 13. They're there, and they've lied to get there, and that's the message we're sending, which I think is not a helpful message.

>> Phyllis Spaeth: Becky, I don't dis--

>> Richard Quaresima: Let me just sort of follow up. But if that's the message, did you have any proposal to -- I mean, would a different standard at all try to address that problem?

>> Becky Burr: Well, I think there are very good reasons to think about different ways of -- different levels of parental consent, maybe turning to a notice provision only. If a website is engaging in, you know, activities within a certain parameter so that there's a safe harbor not for compliance with COPPA, but there's a safe harbor that gets you out of the verifiable parental consent and sends you into a no-penalty notification provision, something like that. I think those are the changes that would make the most difference, that would encourage children to be honest and encourage communication between parents and children through notice, as opposed to not being able to get on the site at that moment when the kid wants to.

>> Mamie Kresses: Sort of go back to -- and I would go back to Jeff, who had said earlier that a broader standard would not be workable for all sorts of websites today. And I think that's just -- it's just too easy to say, and so we need to look at how would it not be workable and how would you

work around it if a reasonable expectation or a more constructive-knowledge standard were dropped on you from the sky?

>> Jeffrey Greenbaum: Well, you know, again, I think that there's -- I think we're -- I still think, you know, we're talking about two different things. I think that the notion of, you know, what an online service website or online service directed to children, I think, you know, the FTC could develop guidance that says, what does it mean to be directed to children? You know, it's one thing to have a site that is obviously directed to kids -- you know, the "Dora" website or whatever it is -- you know that that's directed to kids. You know little kids are going on. You know, I don't -- I think you could also give guidance that says, you know, "Look at your audience. Look at the number of kids that are coming to your -- Look at the -- You know, do demographics. Do research." If if you have a concern there is a substantial number of kids, that may be something that you could explore, but at least it would give, you know, it would give you certainty. The issue -- and I think we're going to talk about this a little more -- is, is, you know, what we're talking about here is not children generally. I mean, the actual-knowledge standard is not about actual knowledge that you are collecting information from children. It is actual knowledge that you are collecting personal information from a child. And I think that we have to get back to the statute here, and what the statute is, is either a website that's directed to a child audience generally -- and I think we can explore that and develop that in a way that is perhaps is productive. But I think that, in terms of collecting personal information from a child, it's temporal. It's about, at a moment in time, you're collecting personal information from a specific child. And so that is a very, very high standard to reach, to meet. And I think that it would be an extremely difficult one to say that, at any moment, that a child is entering information on your website, you have this obligation to, you know, have 11,000 people standing by and reviewing the website and making sure that every keystroke goes in, and the minute, the moment the words, "I'm 10," goes on, you go, "Got to delete that," because, you know, you now have actual knowledge that you're collecting information from a child. So, obviously, you know, we have to be more -- we have to be rational. We have to say, "Well, look, we know kids are gonna lie, we realize we've set up a system which leads kids to lie, and we know that there's a, you know, a tremendous amount of Web content." You look at the amount of content that is posted every day on any major social-networking site, and you realize it's just simply not possible to go and screen that or monitor that way in any kind of a productive way.

And I think the other problem -- and I think we can talk more about this, too -- is you don't want to create reverse incentives, either. I mean, you do want website operators to have the ability to engage in conduct which helps protect the safety of people online, that protects -- that tries to protect the privacy of people online, and to do that, you have to enable them to go and look at things that they believe would be helpful. But the minute that you start to go down that road, you start to get into the question of, "Well, you know, you were look-- you started to look at that site. You have that person there. You could have done this, this, and this. You should have known that those kids were -- that there were kids there, if you had looked a little bit deeper, looked deeper into the comments. You start to get yourself into a murky world, which I think would be extremely unworkable.

>> Richard Quaresima: Actually, you had noticed something that I -- you talked about something that I did want to explore, and that was the different -- the idea that operators of websites directed to children and that -- those that have actual knowledge that it is collecting personal information from a child, and I did want to explore that and give some of the other panelists an opportunity to speak on that. Guilherme, did you have any thoughts on that?

>> Guilherme Roschke: Well, I think that the --

>> Richard Quaresima: Would you agree with -- Would you agree with Jeff's characterization of that?

>> Guilherme Roschke: Not exactly. I think it would be kind of wrong and it would protect children less to read too much meaning into this. You know, let's take the example of, like, behavioral targeting, where you're not targeting -- you're probabilistically targeting children. You know, I think that that would fit probably under the directed-at-children standard. But then, there's a certain point, which, depending how your behavioral-targeting analytics are done, where you know that pretty much all of these are children, and at a certain point where we can talk about you having actual knowledge that you're collecting information from a child here.

>> Richard Quaresima: Gwenn, did you have anything to add to that?

>> Gwenn O'Keeffe: Yeah, I think -- well, there's a lot of ways of looking at this. The first is, you know, getting back to something Jeff said, we cannot, on any level, be okay with a system that encourages children to lie, and I think that it -- I have -- It just -- You know, from a developmental point of view to have a system that tells kids, "You can lie about your age," we are teaching kids the wrong lesson and putting them in just so many precarious situations for their health, their well-being, their safety, and their development. I mean, we're not even talking about privacy yet. We are just putting them in arm's length of danger. Now, from a privacy point of view, we're putting them at risk there, too. So we are just teaching them, "Hey, guys, go ahead and lie. We're cool with that." We can't be cool with that. We can't be cool with that as educators, we can't be cool with that as professionals, we can't be cool with that as parents, and we can't tell parents to be cool with that. So if we're going to have some good come out of today, we have to look at the statute. And what we're here to do on this panel and recognize is that actual knowledge doesn't work. Now, constructive knowledge -- that does work because we know that, if a child posts information about their life that implies that they're 10, a website can do something about that. Posting works. Posting behavior works. websites use behavioral targeting all the time to do ads, to do all sorts of information collecting. We know about a child, and we can target who they are by what they post about every single day. If we changed what type of knowledge we used to capture a child, we can better serve their needs -- actual knowledge isn't it.

>> Richard Quaresima: I'd like to go to the audience now if anybody has -- I think we have a question in the audience.

>> Toby Levin: Good morning. My name is Toby Levin. I'm recently retired from federal service. I was at the Federal Trade Commission when the agency was working on legislation and the regulation and was the first COPPA program manager. So if I can just bring a little historical perspective on this and recognize that I think the FTC staff did an amazing job in 1999 of coming up with the regulation that works incredibly well, but recognizing that does create some compliance challenges and, obviously, some challenges for industry, as well. I'd like to think of, when we dealt with the actual knowledge, we were not strictly identifying the age registration as the only way to determine actual knowledge. We were dealing with what was a common practice at the time. We

know that, even for nonchildren, date of birth is greatly desired by websites. They want to know their audience very specifically, so they weren't doing age registration just for COPPA -- they were doing age registration because it was valuable information. So the agency piggybacked on what was a convention at the time and then tried to use that in a way to at least get kids to input ages and prevent them from going back and changing them by requiring, as Phyllis noted, that there would be a mechanism in place to prevent them from going back and changing their date of birth. But the Rule itself doesn't limit actual knowledge to age registration. It specifically gave some other illustrations, some examples. It talked about information that might come from a concerned parent, asking age-identifying questions, and we were just reflecting examples of what we were aware of then. I think, since then, there are probably a lot of other means by which actual knowledge can be determined. We did note in the preamble the fact that experiential evidence -- actually data regarding, you know, who -- empirical evidence regarding, you know, who is going to websites would be useful in identifying websites directed to children. But I think if you look at it as on a spectrum of where you have websites directed to children, all the way to actual knowledge, that somewhere in between -- and maybe it's addressed by the concept of constructive knowledge, there are -- there's indicia that children are going to -- and younger children are going to some of these websites.

>> Richard Quaresima: Let me -- Let me -- Actually, I can take the opportunity, because I was going to go there, anyway, to throw open to our panelists -- I mean, how -- what are some of those other ways that, you know, currently, in the online environment, that a business might actually -- might acquire this actual knowledge? And I need to start with our business representatives. Christine, let me start with you on that.

>> Christine Jones: There are many, and one of the things that we see a lot coming from customers whose websites we host is complaints where Mom calls and says Daughter just was served up an advertisement for a company that makes products for children. "And why are you serving my daughter with an ad that targets kids?" So we know somehow that ad network has knowledge that probably the person looking at the screen at that particular time is a kid. So this gets back to kind of what Gwenn was saying -- they're getting the information somehow, right? They're looking at where the kid came from. So did they come from a child's website or a website designed to solicit

children? Do they have a Web-browsing history that they're collecting in their vast array of data that goes into their algorithm to determine what ad to pop up? Did they buy information from a website that said, specifically, "This person at this I.P. address is this age"? There are a multitude of ways, and we see all of them every day because, believe me, when you pick up the phone 24 hours a day and the operators of websites that you host don't, you get the phone calls. You get the people saying, "Hey, Go Daddy, what's going on and why are you targeting my kid?" And we say, "Well, actually, sir, I'm sorry -- I'm not targeting your kid, but let me go talk to my customer who is." So there are a multitude of ways that people do it. It's very clever. I'm not gonna stand up here and say I patently agree with Gwenn, that actual knowledge is the wrong standard, but it's fascinating to hear from you, from your perspective, because it's completely different than ours. We're much more responsive to the complaints, whereas you're sort of suggesting a solution maybe that's different. So I'd love to hear more about what you think the standard should be.

>> Richard Quaresima: Phil?

>> Phil Terzian: I just want to finish up on the question real quick. I mean, it was just brought up - - you know, one excellent example is the one that the FTC provides, which is, if parents, a concerned parent, such as myself, as a parent, if I were to call and say that, "Hey, there's an issue," the companies have to then have the knowledge. You know, we, of course, would have a mechanic in place for parents to do that, as would, I assume, most websites out there. So that would be one great example of where someone might have actual knowledge.

>> Richard Quaresima: I, also, just to, you know, finish up on that point, I mean, I think that -- I think the actual-knowledge standard is working in the sense that it has led to the two companies complying with the Children's Online Privacy Protection Act and that, to the extent that operators obtain actual knowledge, they're addressing it. Now, I think that we may wish that Congress made a different choice, and I think that that's something that we could look at, but I think that, you know, in terms of, does the standard itself work and is it workable, I think it is. I think there's another thing that is important to remember here is there's no magic to age 13. I mean, there's no -- nothing that happens -- you know, there's nothing that happens unless you're having a bar or bat mitzvah, when you turn 13, that suddenly turns you into a man or woman. But so there's a

spectrum, and we've picked a moment in time which allows us to sort of, you know, try to gauge where the behavior is, but I think that what you would probably look is, if you did the research, is that, you know, kids that are really young on the spectrum are not lying and are not getting their personal information online. And as you get older, you know, and as you're more ready to be able to deal with all of the things that the Internet has to offer, you get better able to deal with it. And I think that that's certainly an area where could do research on, but I also think we have to realize there is no standard -- there is no age that is going to, you know, create a situation where no kid can, you know, disclose personal information.

>> Gwenn O'Keeffe: Let me just make a --

>> Richard Quaresima: Okay, I'll let you, Gwenn, and then I know we have another question in the audience that I wanted to go to.

>> Gwenn O'Keeffe: Just a quick comment about age -- if you actually look at kids and their online behavior, the younger kids just do not developmentally handle online issues well, and it's not a matter of lying -- they don't have the developmental skills. So they will go online and get into a boatload of trouble because they don't understand the wording. They don't understand how to negotiate. They don't understand how to interact properly. Teenagers, in fact -- you could argue 13 is too young, so we could have an entire panel about that.

>> Male Speaker: Go ahead.

>> Parry Aftab: Hi. My name is Parry Aftab, and I was there in the days when Toby and Kathryn were. They actually had done research on the ability of kids of various ages to understand things, and that's where the 13-year-old age came from. They said that 13 was the magic age that kids understood it. My real concern, though, is with the CDA and how it's going to interact with this actual knowledge. If we go into constructive knowledge, are we now going to say that the websites and service providers that are exempt from what their users are doing on their site and don't have to monitor are now going to be required to monitor because it's a general-audience site that's really popular with kids at the time? And I think we have to be very cautious -- I mean, I run

"WiredSafety." I'm the one who's out there, trying to protect kids. We have to be very careful when we look at actual knowledge if we move it to constructive -- and, Gwenn, you know I love you -- if you move it to constructive, what are you moving it to? So that means everyone's now gonna have to monitor it. And the last issue is, kids lie. We know they lie about their age. More importantly, they lie about the age of their friends. So, if somebody's on Facebook, legitimately 14 years old, and they don't like somebody else in their class, they will report them as underage.

>> Jeffrey Greenbaum: [Chuckles]

>> Parry Aftab: They will pretend to be their parents. They will do all kinds of things to get somebody else out. It's a form of cyberbullying. It's cyberbullying by proxy. So, as we're looking at this, when you look at actual knowledge and who is telling you what, we need to recognize that kids lie on both sides. "I'm 97. And, oh, by the way, my friend is 12." [Laughter]

>> Female Speaker: This is true.

>> Female Speaker #2: Okay.

>> Male Speaker: I'm sorry.

>> Female Speaker: I just have one quick --

>> Becky Burr: Okay, I just want to not leave this issue of advertising targeted to children untouched because I would say that, if you are a website and you are selling -- you are promoting your website as, you know, a demographics of 8-to-10-year-olds or 8-to-12-year-olds, that is something that would certainly be part of the consideration for a directive to children from my perspective. So I don't -- I don't think that we have to move into this "constructive versus actual knowledge" world because of behavioral targeting.

>> Mamie Kresses: And the Rule itself -- the Statement of Basis and Purpose does discuss that that is one factor that we can look to as both demographic information and, you know, what advertising

is doing. But I think the question gets a lot harder when we're talking about ads targeted to particular people, as opposed to ads just sitting on the website. Does anybody have any further thoughts on that question of how we use that indicia? Okay.

>> Becky Burr: I mean, if there's an ad targeted to a specific person at age 9, then I think we have to at least think about whether, in that case, we're talking about, you know, targeting a child.

>> Mamie Kresses: And then, Kathryn, go ahead.

>> Kathryn C. Montgomery: Yeah, I'm glad you brought up -- First of all, I want to thank Toby for reminding us of the ways in which we all dealt with this difficult question. I mean, I had said to Angela when the panel started, "I hate this," because it's complicated. It was complicated then. It's complicated now, and no solution is perfect. But I appreciate Toby reminding us that there were a number of different indicators that we included in the definition. The market, as everybody knows, has changed tremendously, and I think it would be a mistake if the commission did not closely look at behavioral targeting and profiling and analytics and those kinds of data-collection practices that are state-of-the-art now in the digital marketplace as a source of information for clarifying how this part of the Rule works. Again, it could be, you know, controversial and a naughty question to address, but I think it's important. The other thing that I would like to respond to is what Phyllis was discussing because I do think that teen websites are a particular category that we may want to look at more closely. It is true that kids watch up, they want to go on the sites for teens, and developing some more effective mechanisms that are industry-wide would be a really good idea. And then, finally, I hope somebody will talk a little bit more about social networks because there's a lot of knowledge that goes on there about -- and there's a lot of data mining that goes on there, as well. And it shouldn't be overlooked.

>> Mamie Kresses: Okay, and in that vein of teen market -- teen websites, Guilherme, do you think that there is leeway within the actual-knowledge standard itself to deal with sites that target kind of above and below that line?

>> Guilherme Roschke: Well, I think that when you're looking for -- You know, actual knowledge is a factual determination, and one of the facts that should weight -- that would weigh into that fact is that your website is attractive to children. And so that would be part of the information that you have when you're coming up with the knowledge of the age much of your -- of somebody on your website. You know, other information would be things like, for example, if somebody is visiting your website with a kid-oriented browser, that is information that's available to you that you can use to determine their age, as well. And it could be part of your actual-knowledge determination.

>> Richard Quaresima: I'm sorry. Phyllis, you had something you want to say?

>> Phyllis Spaeth: Yeah, I -- I'm sorry. I don't want to just toot CARU's horn, but I will say that, since we started looking at websites -- and I'm telling you, we haven't really gone to adult-oriented websites -- we've done what I've said, which is look at teen-oriented websites, or things that we know that kids are interested in. We've done over 200 cases, and I would tell you, in the last year and a half, we have, I think, 25 reasonable-knowledge cases. And everybody that we've contacted, 95% or over, have agreed to make the changes. And anybody can argue, "Yes, kids lie," and that's a whole other thing that we have to deal with. I'm the first one to say that, 'cause I believe most self-respecting 8-year-olds, you know, that want to get on the Internet know to say they're 13. But we -- Right now, we can only do what we can do. And I do think that the reasonable-expectation standard works.

>> Richard Quaresima: You know, I think I want to expand upon that. I wasn't going to go here quite yet, but let's -- since we're here and we've heard a lot about the concern about that kids lie. So, if one of the big concerns we're dealing with is kids lying, is some sort of constructive-knowledge standard actually more protective of their privacy or less protective? I mean, is it really in their interest to have website operators going around, trying to rout out this information? And you know, I think I'd like to sort of have a general discussion on that. Maybe we'll start here with Phil and then have people pipe in.

>> Phil Terzian: So, just to reiterate, is it more protective -- I'm sorry -- is it more protective to have the site operators trying to weed out potential children who might have said they are either

over the age of 12 or maybe they weren't screened at all? I would first say that I don't think it just applies to children because, if you're trying to figure out how old somebody is and you don't know how old they really are, you're suddenly trying to figure out how old everybody is, potentially, on your site. I mean, I'm sure most of you have used Facebook and have seen people's profile pictures. Some use when they were younger. Some use their kids. You know, I don't know how'd you deal with something like that, and I think it's a burden you might not want to put on the -- both on the site operators, but it might also, I would say, reduce your expectation of privacy as a user, knowing that every site operator out there is trying to figure out who you are.

>> Mamie Kresses: Anything else?

>> Jeffrey Greenbaum: Yeah, well, I think, also, we have to -- Obviously, this raises significant constitutional issues, as well. I mean, you know, people do -- you know, adults, teenagers -- you know, they do have the right, or there are many socially beneficial reasons why people would go online anonymously and look for certain kinds of information or do certain kinds of things online, and I think that we have to be sensitive to the notion that, you know, operating in a digital world, operating in virtual worlds, this is part of, you know, what it means to grow up today. And you know, we have to figure out ways that are going to allow kids to do that and allow kids to perhaps explore some kind of -- you know, building certain kinds of relationships online, as well, and those are important things that could be lost if we took a standard that was overprotective. Of course, the standard is not constructive knowledge -- it's actual knowledge, and so it would require, I think, you know -- I don't think that that's something that can happen at the commission, you know, 'cause I think that the standard --

>> Richard Quaresima: I think that's right, yeah.

>> Jeffrey Greenbaum: But I do think -- I still get back to -- I think that we keep getting the two issues a little bit intertwined, and I think that they're very, very different. I think actual knowledge is specific. I think that, directed to children, as a website -- I mean, I think that, you know, what Phyllis' point, which is, I think, a very nice one is, is that, when you look at "directed to children" in a rational way, you know, it may just not mean -- it may mean many more things than some people

have understood it to mean. And I think that CARU's very important work in looking at teen-directed sites that are also very attractive to young kids -- doesn't require any, you know, rejiggering of the statute here or rejiggering of the Rule. It simply -- It simply means us to rethink or think a little bit more deeply about what does it mean to be a website directed to children, without having to work with the actual-knowledge standard.

>> Richard Quaresima: Gwenn?

>> Gwenn O'Keeffe: Well, you know, it may be that, instead of going -- you know, constructive knowledge may not be the right phrase. It may be that we actually have actual knowledge about kids by the way they post. We just may need a better reporting system because I do agree with Parry that kids lie all the time, but younger kids typically don't lie about things that they love to tell stories about. So, if a kid is really excited about a fifth-grade field trip and they're sharing that Wall-to-Wall, they're gonna be factual about that. And if somebody wants to report that, they may need a way to do that, and then we could argue maybe that that is actual knowledge, and right now that can't be used. So maybe we just need to be more realistic about today's sites and the sites kids are on and how they're using information about themselves and what information can be used for people to report that, "Hey, I know this kid is on that site." And we haven't even gotten into the reporting of who is on these sites. That's a whole different issue that we should probably address, too. But kids do often give away who they are. You know, sometimes they fudge, and sometimes they, you know, love to tell big whoppers, but, you know, a kid will often, you know, give enough clues of who they are because that's who they tend to be. They tend to wear their hearts on their sleeves that way when they're talking to each other and they're really getting into, you know, a nice little trail of a nice little peer group, especially the younger kids because the younger kids stick together on Facebook and the social-networking sites.

>> Becky Burr: Isn't there a requirement if somebody -- I mean, if somebody reports it, that -- why couldn't you use that information?

>> Mamie Kresses: That is -- You know, that's in the Statement of Basis and Purpose, that that is one method, and certainly, it's there. But I guess that leads to, you know, a sort of finite question

of, what sense do any of the panelists have of how easy it is for parents to report children being on a site where they don't want them to be and how responsive are the online services?

>> Female Speaker: Well, it's easy to find the link to report. I went on yesterday to both MySpace and Facebook. MySpace's reporting links are there on the site. Facebook -- you have to go to the Help Center and dig a little bit. It's a little harder, but if you find the link, up comes a nice little form you can fill out, and there it is. But I hear consistently from parents that getting -- and, actually, MySpace actually will take you, walk you right through, "How do I delete my kid's profile?" Facebook, though, basically says, "If you want to delete your kid's profile, talk to your kid," and then, if you need to reach a live person, the parents will tell you it's impossible. You know, and that's the issue, that, if you want to get response back, you can't find a person -- there's no 800 number, in other words.

>> Mamie Kresses: And, Phyllis, from your perspective, going beyond Facebook and MySpace, do you have any sense of how difficult or easy it is for parents?

>> Phyllis Spaeth: Absolutely not. Nobody has ever complained to us about that. And I think that's very interesting.

>> Richard Quaresima: Christine, I think you had something you wanted to add.

>> Christine Jones: Well, this is where the people who answer their phones 24 hours a day come in because it is absolutely impossible to get a live body at Facebook. It just is.

>> Female Speaker: Yeah, you can't.

>> Christine Jones: You just cannot get a person on the phone, which is why, when you answer your phone 24/7, you end up with all the lunatics calling you, making complaints. [Laughter] No offense, parents. [Laughter] But -- I don't think -- we cannot lose sight of your really, really, really good point on the CDA because if you start ascribing that responsibility to me, just because I pick up the phone and it's all user-generated content -- I didn't put that content out there, folks.

Some 8-year-old did. And, Parent, why don't you go figure out what your 8-year-old's doing? I'm sorry to be so blunt about it, but come on. We know kids lie, we know they're under 13, and we know they're giving the website actual knowledge. So why don't you figure out what your kid is doing online instead of calling me and telling me it's my fault? Sorry. I didn't mean to get all emotional, but, wow.

>> Richard Quaresima: Interesting point, but...

>> Female Speaker: There's a lot of people who feel that way.

>> Richard Quaresima: But, you know, here's the question --

>> Christine Jones: And she brought up the CDA, so it's her fault. [Laughter]

>> Richard Quaresima: But it raises an interesting point in this online environment, where you have tens of millions of users of a service, all right, you know, and somebody has reported some way, all right, a parent that, "My child," all right, "has put this information out there," right? And does that trigger actual knowledge on the part of somebody who is collecting the information, in this case, "collecting" can also mean providing a forum for disclosure. I think, Jeffrey, you had some point about that.

>> Jeffrey Greenbaum: Well, I think that -- I think there -- you know, there are also important lessons to be learned from the DMCA, as well. And you know, I think the DMCA was enacted right around the same time as COPPA, and the DMCA made very, very different choices. I mean, the DMCA has both an actual-knowledge standard, as well as, essentially, a constructive-knowledge standard. The constructive-knowledge standard in the DMCA doesn't really work. It doesn't provide any useful guidance. It's a very, very difficult thing to apply, and I think that -- you know, I think that the lesson of that is, is in the context of this very, very big online world, you know, the constructive-knowledge standard doesn't -- or the red-flag standard doesn't really work. On the other hand, the actual-knowledge standard, combined with a procedure that enables someone to send a take-down notice -- enables someone to contact a website and say, "There is

infringing content online, and it's mine, and you should take it down.” It's something that operators have been able to implement. Look, it's not without its challenges. It's not without its gray areas. It's not without its difficulties. I mean, when you're talking about a very, very big website, a very, very big social network that has huge amounts of content, there's enormous costs associated with it. But it is a way that -- it is a way that we've been able to make a certain choice. It's being able to address an issue in a certain way. And I think that there is no reason that -- there's no reason to believe that, you know, websites couldn't do something similar in a privacy setting, where they were given -- where there is certainty and there is a procedure in place that both allows the -- [chuckles] that allows the Internet to continue to develop and these sites to continue to develop, but that gives parents the ability to get the information and make certain choices for their kids.

>> Christine Jones: Can I just touch on that real briefly?

>> Richard Quaresima: Okay, okay, quickly, 'cause then I think Guilherme wants to make a point, too.

>> Christine Jones: Just quickly. About 10 years ago, we wrote -- I -- wrote a mirror policy for trademark infringement, exactly mirroring the DMCA. Today, I look at other people's websites -- I see it everywhere. It works really well. So I think Jeff's point is great. Let's all go write a similar thing for parents to make a report. We'll go take them down like the DMCA, but we got to have a hook, right? I have to have something that makes it legal in order for me to do that. So, let's do that -- totally outside of this panel, but let's do that, too.

>> Richard Quaresima: Well, it may not be outside of this panel. I mean -- You know, I mean, in examining the statute, it might require a statutory change. It also could be possible to do that by the regulation. But let me turn to Guilherme, I think, 'cause he had something to say.

>> Guilherme Roschke: I think we should look back to -- you know, one of the goals here is to put parents in charge and put parents in control. And so there's this notice system, and we're all concerned about how can we make the notice work better? But I think the FTC should seek comments on ways for parents to more easily communicate this actual-knowledge standard -- the

actual knowledge that's required. So, for example, you know, what if I could give a device to my child and then program the device, such that the device would automatically communicate to an operator of a website the actual knowledge that they would need to comply with COPPA and, you know, that my child can lie, but the device -- but then the operator can just trust the signal from the device, as opposed to, you know, whatever my child lies about? You know, I think there are pluses and minuses here, and I'm not 100% behind it. But I think taking comment on this would be really instructive about a way to put parents in charge.

>> Mamie Kresses: And that's something -- that's a good idea for panel 4, where we talk about parental consent, as well, so if we don't sort of get to that point, somebody remind me.

>> Richard Quaresima: Becky, you had a point, too?

>> Becky Burr: I want to remind people about Parry's point about, you know, being put on notice does not necessarily mean that you actually have a child. I am sure it's true there are friends who are reporting each other in that case. I think, though, as if -- Thinking about this, if a site says, "Here's a place to report an underage person," then under the FTC Act -- forget the COPPA -- they have -- they're saying -- they're making a representation that they're going to investigate that and make a determination about whether they have actual knowledge on that basis. I don't think you could assume that just having a report provides actual knowledge. And I don't want to lose sight of the CDA point, but where a site says, "This is how you report, and we will take action," I don't think you need to change the law to take care of that problem.

>> Mamie Kresses: It seems like a good opportunity to ask the audience if you have -- if anybody would like to make a comment on these points being raised.

>> John Nicholson: I'm John Nicholson. I'm with Pillsbury -- the law firm, not the Doughboy. [Laughter] And we're gonna cover this later on today, but my real concern about the knowledge standard comes through the definition of what is personal information and the way that we're moving to aggregations of individually nonidentifiable pieces of information creating a statistically significant profile that individually identifies a person, and if you move from actual knowledge to

constructive knowledge and you have all those individual pieces of information and some researcher does an analysis that says, "Oh, well, if you have hair color and car and family income and these individual pieces, you can actually individually identify this person and you can pick them out in their zip code and you can create a ZIP+4, and you know exactly who it is." And then, when you get to that, does that suddenly become constructive knowledge? And if you've collected all of those things, do you have to then go back and say, "Oh, well, gee, we collect all that information. Somebody's just proven that identifies people. Do I have to go back and look at all my information to figure out whether or not I've got any under-13s?"

>> Mamie Kresses: Okay, thank you.

>> Richard Quaresima: Okay, I think I do want -- We are gonna actually address something like that very soon. Yeah, over here.

>> Female Speaker: Hi. My big issue is that we all know that kids have Gmail accounts, AIM accounts, Facebook accounts, MySpace accounts. I mean, we could -- you know, I'm just topping those off because we all recognize the names. And so, when is industry gonna get out of the way and actually let kids tell the truth? Because industry's the one who's forcing kids to lie. Because if kids could tell the truth, I have to believe some percentage of 11- and 12-year-olds would not lie, would engage the parent, and would ask for consent, and maybe we'd start getting out of the, "There is no methods for consent," because there'd be a reason to process consent.

>> Mamie Kresses: So, are you saying, Denise, that if companies offered more opportunity for consent, it would lessen the amount of lying? I'm not...

>> Female Speaker: Yeah, I mean, To get an iTunes account, you have to be 13. So, if you're an app developer and you build a game, you rely on the fact that, "Well, the only way you can access my game is with the app that you had to be 13, so I don't have any actual knowledge. You must be 13." Or lots of companies that I'm dealing with that have contests, and they want the kids to upload a YouTube video, and they're directing the kid to go to their YouTube site and upload a video, but they can't have a YouTube account or a Gmail account to do so. And so, you know, I know there

are some people that advocate kids shouldn't be on social networks, but there's lots of parents who want their kids to have a Facebook account to talk to their cousin or talk to their father in the military or whatever it might be, and the companies themselves are making no attempt to actually allow a child to tell the truth and then get parental consent under some method that becomes reasonable and scalable.

>> Mamie Kresses: Becky, did you want to comment on that?

>> Becky Burr: Yeah, that goes back to my point earlier, and I want to say -- I think it's not -- I think that this is a function of the difficulty associated with getting verifiable parental consent. And if you had a world in which there were -- there was a broader scope of safe behavior that permitted a website operator to respond, to rely on notice to the parent only, you know, an e-mail notice, and it was the parent's responsibility to then come back to the website -- or the child and say no, that's something that could be automated. That would foster communication. I think there is some percentage of 11- and 12-year-olds who would provide their parents' e-mail address for that purpose. So, I mean, my only -- I guess my point is it's not -- From a practical standpoint, the cost of getting verifiable parental consent is still expensive in this environment.

>> Mamie Kresses: And Gwenn had one thing to say, and then we want to move on to another question.

>> Gwenn O'Keeffe: Just very quickly, the other issue is, while I don't disagree with you that a lot of kids would be truthful, it's not so much a matter of truthfulness -- it's a matter of there's still a digital divide and participation gap. So, even if we didn't have the age issue and even if we didn't have a verifiable parental consent and we weren't dealing with COPPA, getting younger kids online with their parents knowing how to have them be online safely for the 8-to-12-year-olds is very challenging right now because parents don't understand the technologies as well as we'd like them to understand them, especially for social networking and even for things like AIM, and I don't -- you know, texting and all of those things. I don't disagree that there are probably some kids who could handle social networking, but certainly not Facebook and certainly not for under 13. I would even argue 13 can be too young because of the social skills it takes to negotiate that site right now,

but there are some new sites coming out for that age group that would be a wonderful social-networking site, and I think that we have to respect the ages of kids online and help parents be online more safely and that 13 is still a reasonable cutoff for kids outside of the scope of COPPA.

>> Female Speaker: Go ahead.

>> Richard Quaresima: Yeah, we have a couple of questions from the audience. Let's see. I'm trying to balance this. Let me -- I'm gonna give some -- let's give at least another five minutes if not more at the very end for audience questions, but I did want to try to reach two other topic areas, and one of them was essentially to address this other question that we had over here, is that, if, you know, as part of the process, the commission expanded the definition of personal information to include other things, I mean, how does that -- how does it impact the actual knowledge? Will it be easier to show actual knowledge if the definition of personal information were broader? So let me, you know, start with -- I think -- let me start with Christine, maybe, if you had any thoughts on that, and then we can go to Guilherme.

>> Christine Jones: I'm not sure if I know the color of your car or -- what was the other thing you said?

>> John Nicholson: Hair color.

>> Christine Jones: Hair color -- that I have actual knowledge of whether or not you're 13, but there definitely is some combination of factors that I could tie together that would make me believe that you're a certain demographic. I would be really careful about going too far down that path just because, suddenly, am I gonna have actual knowledge because some Google algorithm served up an ad to somebody who's on my website because they -- I don't know. There's just a ridiculous number of things that are going through my head right now in terms of the actual knowledge that could be ascribed to be me of some algorithm that I'm relying on from a third-party provider. So I would caution against making that too broad and having too many factors that are going into that actual knowledge -- the definition of what includes actual knowledge.

>> Richard Quaresima: Guilherme?

>> Jeffrey Greenbaum: Okay.

>> Guilherme Roschke: I think, once we're broadening the definition of PII, which would, you know, start to capture more behavioral advertising, it would certainly impact the sorts of -- the actual knowledge and, also, the "directed at children" determinations that are made. So, a third party -- I think a third-party out of network that promised to, like, deliver ads to someone under 13 would -- is likely saying they have actual knowledge that these people are under 13, and they arguably also fit under the directed-at-children standard. You know, actual knowledge can also be derived from other age-related information, like, such as the grade that people are in school, you know, if you've got them participating in a social group, such as the Cub Scouts. You know, so an ad network collecting, using, or targeting this information would qualify under actual knowledge. And you know, lastly, you know, I think we don't really have a directed-at-children panel, but, you know, they would also be considered directed at children under the traditional standards of the content, like the creative content that they are using, as directed to children. Or, you know, are the interest categories that they're using directed at children, much like you can have a Barbie website be directed at children? Same with, you know, an interest category of Barbie fans would be directed at children.

>> Richard Quaresima: Okay.

>> Jeffrey Greenbaum: You know, what I would just -- You know, what I would just say there is I think that there is a big difference between actual knowledge, that personal information is being collected from a child, versus you have the ability to determine whether information is being collected from a child.

>> Christine Jones: Right, right.

>> Jeffrey Greenbaum: I think that those are two, you know, extremely difficult things, and I don't think the statute, you know, would -- the second would fall under the statute, but, I, also, again, I

don't think it would be workable. And the standard I would apply, which I think is probably the standard we should judge all of this by, is the phone number when you call Phyllis and Mamie and ask them the question of, "Well, what do we do here?" And I think it's important -- and if someone hadn't mentioned it earlier, I wanted to mention it, which is I think that this such a model of really great government, which is this -- the service that they have provided and the ability -- what they have given in terms of, you know, being able to call up, have these conversations with someone -- you know, not the sort of notion of there is no one at the other end of the line, but someone who is really actually helping you comply -- I think it works so well, and I just want to commend them 'cause I think it's an incredible thing. But I look at some of these things, and I say -- you know, I would call them up and they would go, "Yeah, I don't see how we would apply that." So I think we have to have a Phyllis and Mamie panel, which is, you know, we'll ask them these questions and see if they could actually give an answer, and then we'll know. [Laughter and applause]

>> Mamie Kresses: And that, actually -- You know, it's people like Jeff and Becky and lots of people I see out in the room that, you know, have, you know, in some way contributed to the process that we're in now because we are, you know, reaching questions that are not simple, and they apply to a lot of people. And so, you know, we thought this is a way to get at that. But I want to turn the discussion a little bit around and say -- ask the question, assuming that an operator really does want to use its best effort to identify kids on its service who are lying about their ages, does the actual-knowledge standard deter the best efforts of these companies because they don't want to acquire actual knowledge? And I was wondering if anyone would speak to that. Phil? [Laughter]

>> Phil Terzian: I'll take that one. No. I would say no. You know, We're part of a safe-harbor program, and no one's really talked much about that yet, but it's also something that's commendable that the FTC provides and that there's four great providers here in the room, as well. And as part of our program, I mean, we focus on screening and registration for COPPA compliance. You know, we don't do it in a tricky way to try to, you know, check if you're under 13 here or over 13. We do it very neutral, in line with what the FTC has given guidance on. I think that's consistent with the intent of the law and the practical realities of trying to screen out the children, assuming, as we all agree, that, you know, not every child is gonna tell the truth. I think that's the best you can do with it the way it is. The other thing is, what can you do postregistration? You know, it's one thing to

talk about trying to determine how old someone is at a set point in time -- predictable, consistent -- versus trying to figure out -- and there's been a lot of talk already on this, so I won't go into it, but how to figure out what someone is saying later on that might give rise to something else. You know, in the vast world of user-generated content over there, it's a very daunting task to even touch upon that.

>> Mamie Kresses: Becky, do you have any thoughts on that?

>> Becky Burr: I guess, if you ask -- I mean, if you age-gate, then you -- let me step back. I don't - - I'm not sure it's the actual-knowledge standard that is a problem here. I think we just have to be realistic about what a website can actually do in an automated fashion that doesn't require, you know, thousands of people standing up and looking at the information afterwards. My sense is that there are a lot of sites out there that are responsible and do want to identify underage children and are using various tools to do that. They're not foolproof, but to the extent the tools still require a human being at the end of the line to look at them, that is difficult and expensive and not particularly consistent with the economics of most of the websites.

>> Mamie Kresses: Okay. And would it help if there were -- if there were some sort of safe harbor for taking an effort that you would not be, you know, punished for that effort? Do you think that would be something that businesses would be interested in? Christine?

>> Christine Jones: Well, we always like a good safe-harbor provision, and we use them to great effect every day. The DMCA is a great example. But I think the answer to your original question here is no, absolutely not. If we go out and tell website operators to collect more information about kids so we can figure out if they're kids, that is counterproductive, guys. That specifically does not protect their privacy, right? We're collecting more information when we should be collecting less information. So the answer to that question is no. What website operators can do, if they really care about protecting kids, is look at the collective data that you have. If you think it might be a kid, don't serve up porn spam, okay? If you think it's a kid, then don't give them stuff that kids shouldn't see. I mean, really, if we're really trying to protect children here and really trying to protect kids' privacy, don't collect more data about them and don't show them stuff that they

shouldn't see. I mean, honestly, it's not that hard if you're a good website operator. And most of the ones that we've talked about here today, the big ones are, right? This is about the smaller, maybe less upstanding corporate citizens that we're trying to talk about, right? [Laughter]

>> Mamie Kresses: Jeff?

>> Jeffrey Greenbaum: This was not a statute that was designed to create incentives for websites -- to monitor the websites. I mean, it's not like the CDA, which, you know, certainly provided the ability of websites to monitor and take action when it felt it was necessary, and, you know, certainly, I think that many companies would be very, very responsive to. If there were ways that the FTC or Congress, as necessary, provided the incentives or the abilities of companies to do more that they wanted to do, I think many, many companies want to do that, and I think that there are many people that feel constrained. I also think we have to recognize that there is a limit to what we can do in a rule or a statute. At some level, I think there's lots companies can do, but, you know, there's people -- you know, the people at the other end of the line -- the parents are gonna have to do it, too. And I think we all have to recognize, as parents, that a lot of this and a lot of the great work that's been done is about the education, and, certainly, COPPA served that role, too. But, you know, really, it's gonna require some in-person monitoring, too, and that, you know, we're gonna have to continue to balance the interests here to make sure that, you know, we get the good parts out of both.

>> Becky Burr: Mamie, I would be really, really careful about a safe harbor here, only because I think that, you know, applying a standard across a huge variety of websites is very, very hard to do and you may end up with a sort of de facto minimum that comes back to bite you when what you've selected as the safe harbor isn't possible, given the site arrangement.

>> Mamie Kresses: The floor. Okay.

>> Gwenn O'Keeffe: Mamie. Mamie.

>> Richard Quaresima: I wanted -- I noticed there were some --

>> Gwenn O'Keeffe: One quick point -- I just wanted to echo it. Jeff said -- I mean, education is, ultimately, the bottom line and, I think, parental empowerment. You know, no rule is going to be foolproof, but I think we can all agree that we can empower parents to be more involved with their kids and we can all help to educate. And I don't think any of us do enough to do that, and I think all businesses actually should take a more active role in education. And I think if everybody reinforced the same messages about online protection and privacy of kids, independent of this Rule, kids would be safer online -- and help parents do a better job parenting online. If anybody does that, frankly, a Rule's not necessary.

>> Mamie: Okay.

>> Richard Quaresima: Did -- Phyllis, did you have something to say?

>> Phyllis Spaeth: Yeah, I have something. Yeah, I just wanted to say that, again, the "Net Cetera" guide is incredible. I'm thinking about Admongo, which doesn't have to do with the Internet -- it has to do with advertising, but that's something that goes into schools. I think that a program that started teaching in schools about the use of the Internet, starting at a really young age when kids first go online -- I think that would do more than anything.

>> Mamie Kresses: Okay. So, we only have a couple of minutes left, so I'd really like to -- we'd love to hear from people on the other side of the table. Any other thoughts about the actual-knowledge standard or questions?

>> Male Speaker: I have two comments, one in regards to the constructive-knowledge standard or the directed-to-children standard. You know, I think the flexibility in that standard that exists today is a good thing for industry and, in particular, when you look at the types of games on the Internet today, many of which are not for kids, a lot of them are animated, have heavy animation. I think the world is animated today. We're living in an avatar world. So I think the flexibility there and the consideration of various factors is a good thing, and that should certainly stick to the extent that it can. The second comment I have is with regards to actual knowledge, and I don't think this was a

point that was addressed on this panel. Forgive me. I walked out for a few minutes. But that is the issue of who has the duty -- now, COPPA doesn't have an explicit requirement to screen for age in particular, but the question is who has the duty when you've got these devices which are Apple devices -- okay? -- and you've got the front-end platform, which is iTunes, and then you've got the third-party developers. And then the same thing is true -- So, you've got the third-party apps, the mobile apps. The same thing is true in the Facebook world. You've got the Facebook platform as well as the other social-network platforms. Then you've got the third-party-developer games and whatnot sitting on top of that. And there's data being exchanged -- right? -- and there are assumptions being made as to the ages of the user, and today most of these third-party apps, whether they're on the mobile devices or in the Internet world, are really relying on the original entry point, whether it's Facebook, MySpace, iTunes, to determine what the age of the user is. Is that -- Who has that duty? Where do we see that going? And is there any guidance that could come out of COPPA to help address that issue?

>> Mamie Kresses: Does anybody on the panel want to touch that? Guilherme?

>> Guilherme Roschke: I mean, I think that, you know, each one of them, to the extent that each one is an operator of an online service, each one has to make their own determination of whether they're directed at children or whether they have actual knowledge. You know, the information that's flowing back and forth between these services can add to the actual knowledge determination. If I have Facebook Connect on my website and I use the information from Facebook Connect, then that's part of the knowledge that I have about my users. Likewise, if Facebook Connect is just, you know, without me, is sending the information to me, that's part of the information that I have available to me that would go into my determination of the age of my users.

>> Mamie Kresses: And does that -- You've both raised a good point and something we actually wanted to get to and just didn't have time. But, Guilherme, does the services like the OpenID and Facebook Connect, Google Buzz -- Does that -- If kids are aging up to set up those accounts, does that complicate the actual knowledge discussion?

>> Guilherme Roschke: I mean, I think it complicates it in the sense that it adds more information to the actual knowledge determination. I don't think it complicates it too much from the point of view of information is now more hidden, and then you also have the determination of whether the operator -- You know, who is the operator of the online service? I think it's -- You know, we saw in the earlier panel there could be more than one. So, I think each unit here is going to make its own determin-- would have to be determined separately.

>> Mamie Kresses: Okay. We have like one or two minutes. Do we have any other questions? There's someone right here.

>> Female Speaker: Thank you. In terms of the actual knowledge standard, there are a number of websites who follow Phyllis' recommendation of trying to do more. I would say that I'm aware of several companies who institute neutral age screening per CARU/FTC recommendations to try to prevent collecting personal information from somebody who's a child. Those sites typically report that 25% to 30% of their complaints from adults is that they're age-screened out. They can't access the content. They can't go to the shop. And it goes back to, I think, a point several panelists made that these are interconnected issues that the standard that you apply and going beyond that standard imposes costs on a company and imposes burdens on the consumer that you're actually trying to target. I'm curious if any of the other panel members have experience or comments on that particular issue.

>> Mamie Kresses: Anybody have any comments? Okay. And I think there was another question right here.

>> Male Speaker: In a recent survey of under-13s of where they were playing online, two of the top games in the top five of under-13s were actually games that were on the Facebook platform, so they shouldn't have been playing them. Is it fair that websites that do ask for age and do accept under-13s cannot sit on that platform? So, they're excluded from sitting on the Facebook platform, where other games are just age games and say, "Tell us you're over 13, you can play."

>> Mamie Kresses: Does anyone want to comment on that?

>> Female Speaker: I'm not sure I understood the question.

>> Male Speaker: So, the question is, on the Facebook platform, you're over 13, okay? So, the games that are on there -- a recent survey of under-13s, two of the top games they were playing were on the Facebook platform. Is it fair that games that do ask for age of the users and do allow under-13s are excluded from that platform, which is a powerful platform?

>> Mamie Kresses: That's a great question. I don't know that we have an answer, but...

>> Female Speaker: Actually, I think it is a really great question, and it is a question where, if you had some differentiation, you could address that problem so you have a platform that you're providing notice to parents on about -- you know, an e-mail notice about your kid is doing this -- and then there's some game or some add-on or something else that requires a greater level of sophistication or maturity, you can age-screen. And you're not penalized down the line. So, I actually think that there is a way to do it, but it involves changing the dynamics about how hard it is to get parental consent.

>> Mamie Kresses: Okay. And with that, we are gonna come back for Panel Four, which talks about -- Panel Three, sorry -- and then later, Panel Four, so let's break for lunch. In your pamphlets, there are a list of places that are not too far away, and everybody should try to be back by 1:15. Thank you very much.

>> Female Speaker: Quickly, before we break for lunch, we found a CD marked "confidential." [Laughter] If you may have lost that CD, there are additional words on the front, and if you it tell me what they say, I will hand it over to you.