

>> Female Speaker: Good afternoon everyone. If you could make your way to your seats, we'll begin the afternoon session. It's my pleasure this afternoon to introduce our kickoff speaker, Commissioner Pamela Jones Harbour. Commissioner Harbour is an internationally known expert on privacy issues, and when I say internationally known, I'm not exaggerating. Commissioner Harbour has been the senior member of the U.S. Delegation to the APEC Committee that's considering privacy issues in e-commerce. And in that role, she has been instrumental in drafting APEC cross border privacy rules. And so it's our pleasure to have her here this afternoon kicking off our afternoon session and I'd like to call her up to the podium. Commissioner Harbour?

[Applause]

>> Pamela Harbour: Thank you, Venetia. Welcome back from lunch. And thank you for the opportunity to offer a few thoughts to begin the afternoon. As many of you know, my time at the FTC is coming to a close. Throughout my term, privacy issues have been among my highest priorities and I'm encouraged that the commission through this roundtable series is now engaging stake holders in a holistic discussion of privacy. In 2007, at the "Ehvioral" town hall, it initiated an important conversation by focusing attention on behavioral targeting. But even more importantly, the town hall raised the key questions that have since triggered a return to first principles, as the FTC reevaluates the framework it uses to analyze privacy. As part of its promise of change, the current administration has embraced technology and innovation along with a new era of openness. But real change cannot just be aspirational. It requires concrete action. And unfortunately, with respect to privacy, I believe action has not been a high enough priority to date. Now, I certainly do not intend to criticize Representative Boucher's efforts to craft legislative guidance on behavioral advertising. But as I have previously stated, the United States needs comprehensive privacy legislation. If we continue the piecemeal approach to privacy in this country, we merely push aside the underlying issues. The privacy debate goes far beyond online advertising, because behavioral targeting represents just one aspect of a multifaceted privacy conundrum. Data collection, aggregation and use, as well as reuse, sale and resale are driving the creation of on and offline digital dossiers. Capturing data reflecting individual interests and habits is an enormous and growing business, evidence that consumer privacy is under siege. Online advertising is an enormous source of information collected about consumers and serves as an important lens to focus our understanding of data collection and use. Most consumers cannot begin to comprehend the

types and amounts of information collected by businesses or why their information may be commercially valuable. Data is currency. The larger the data set, the greater potential for analysis and profit. Collection of consumer data is by no means new. Consensus information, credit reports, and Nielsen data have existed for decades. The Internet, however, enables the creation of vastly larger quantities of consumer data. This data are collected every time we send an e-mail, update status on a social networking site, read a newspaper article, run a search or make an online purchase. Of course these technologies have the potential to offer valuable benefits to consumers. The problem, however is that many consumers are completely unaware of the privacy implications of these services which makes it difficult for consumers to exercise and form choices about the sites they visit and the data they disclose. In many instances, consumers pay for free content and services by disclosing their personal information. Their data are then used to generate targeted advertising that subsidizes online activities. And I am especially troubled by the asymmetry between consumer perceptions and business realities. If consumers do not comprehend how their personal information is collected and used, it is possible -- it is impossible for them to knowingly consent to either disclosure or use. And once data is shared, it simply cannot be recalled or deleted. The cumulative consequences then for consumers are magnified whether they realize it or not. It is possible that small discreet disclosures of information do not raise concerns for an individual consumer, but large aggregations of data based on a lifetime of commercial activity might evoke quite a different response. And I fear that we might reach a tipping point whereby consumers decide they want to exercise greater control over the use of their data, but their attempts to exercise this control become futile because so much of their digital life already has been exposed. Industry attempts to provide notice and choice to consumers have been insufficient thus far and I hope we all would agree that disclosures about information, collection, use and control are not meaningful if they are buried deep within opaque privacy policies. And if even if we can decipher the cryptic disclosures, they provide consumers with no meaningful choice or access, which renders those concepts largely illusory. We have strayed far from the information, from the fair information practices that should serve as a baseline for any comprehensive privacy legislation. And all of this matters because consumers really do care about their personal privacy and they are willing to take steps to protect it. The findings of the Turow-Hoffnagel Report conclude that 66% of American adults reject tailored ads to begin with. That number increases to over 75% when consumers are actually educated about the relevant marketing techniques. Yet companies are not delivering the

privacy protections that consumers prefer. Even when consumers have the ability to opt out, the effects are limited. If consumer data is unavailable from one source, often it can be obtained from another. Flash cookies and other technologies largely circumvent cookie controls. For every company crafting a response that addresses notice, choice or transparency, there are several more companies trying to parse and evade the intent of commission guidance. We have entered a digital arms race, if you will, and the outlook is troubling. Privacy issues are important enough that the commission should use every possible tool at its disposal. During my term as a Commissioner, I have been immersed in both consumer protection and competition issues, and I have steadfastly argued that the commission should apply its competition expertise in the privacy arena. For example, when the Commission approved the Google double click merger in December 2007, I wrote a dissenting statement that, among other things, highlighted the nexus between privacy and competition. And while my colleagues at the time disagreed with my premise, subsequent changes in the marketplace have reinforced the validity of my concerns as well as my premise that privacy protections is increasingly viewed as a non price dimension of competition. My dissent proposed the concept of a market for data itself separate from markets for the services fueled by the data. And the dissent discussed John Battelle's "database of intentions" concept, which he describes as "the aggregate results of every search ever entered, every result list ever tendered, and every path taken as a result." And Battelle asserts that no single company controls this collection of information, but posits that a few select companies have control. And one of my key concerns in Google double click was that the merged entity might move closer to dominating the database of intentions and that the network effects generated by combining two firms might have long term negative consequences for consumers. In response to questions raised during the concurrent U.S. and E.U. review of the proposed Google double click merger, Google assured regulators that the deal was not motivated by a desire to enter the behavioral advertising market. In March of this year, however, the company did, in fact, begin to engage in intra-spaced or behavioral advertising. And last month, Google purchased a mobile advertising company, Admob. This acquisition enhanced Google's ability to extend its advertising strategy into the fast-growing mobile market, an important market in which I hope and I expect the Commission will remain vigilant. Turbulent economic times are forcing companies to seek out new sources of revenue. Those sources are driven in turn by increasingly large amounts of data, as well as the ability to mine the various connections between pieces of data. And as firms continue to develop new database markets,

including, for example, cloud computing and smart grid services, we must engage in more serious inquiries regarding both the privacy and competition issues that affect consumers. It is worth noting that to the extent one might define a punitive market for consumer data, recent mergers have further concentrated the competitive landscape. It may also be the case that Comcast announced acquisition of NBC from GE should be analyzed from both competition and consumer protection angles. In any event, competition on the basis of privacy protection is likely to increase as consumer awareness grows. The issues raised by data collection and use provide ripe opportunities for companies to develop pro-consumer privacy tools and to market these features to distinguish themselves from their competitors. In conclusion, I know the Commission will continue to be the thought leader to privacy and I will continue to do my part to push the Commission as I have done for six years now, by challenging mainstream opinions and asking the tough questions. And wherever the conversations may lead, I am proud of the efforts of this very talented FTC staff and I am extremely gratified that we have reached the point where we are hosting these roundtables today. Thank you very much. [Applause]

>> Richard Smith: I've been asked again to give a brief introduction to the afternoon sessions here, to give a technical background of some of the more types of data collection that goes on. In particular, we're going to have an upcoming panel here discussion of online behavioral advertising. And so, the first quick summary I'm going to provide is the technology behind behavioral advertising. As we all know, this area has a good bit of controversy about it. And a couple of years ago, there was a whole workshop by the FTC on behavioral targeting and behavioral advertising. At the time, I did a much larger presentation on the technology behind this type of advertising, and I'll give sort of an abbreviated version of that. The key thing is, what is behavioral advertising as compared to contextual advertising? The key thing, I think as many of us know, that in behavioral advertising, we create profiles based on people's use of the Internet. Over time, we look at what news stories they're reading, what they're searching for, perhaps what they're purchasing, and we provide ads tailored or targeted based on the use of the Internet. Contextual advertising, on the other hand, is more like the Yellow Pages, where you show an ad next to whatever the content is, an ad related to the content. It's much less related to a particular person. The way -- at a high-level view -- again, there's a high-level view. There might be companies out there that do things this way or do it other ways, but I have a chart here on the screen that shows some of the pieces that go into

building a behavioral advertising system. We have our consumer here, down on their personal computer. They're surfing the web and going to a news website, which provides them news articles. And this could be any website, the "New York Times," "Washington Post," "Wall Street Journal," anything like that. And they're reading an article. And along with that article, of course, we see the banner ads that come along with the article. And in a behavioral advertising system then, the ad network provides the ad. It's not the news websites themselves. But instead, we have external ad networks. And what's important here, the data collection device that goes on in a behavioral system is based on cookies, so that over time we can track a person through the web browser cookies. And that's something that the ad network gets as part of the browser that they're running with. The key piece of information that they're looking at is information that comes in a URL that describes in some way the article or what activity they're doing at the website. And then that information goes into a profiling service of some sort. And this is the engine that creates and discovers and builds the profile, and provides back what kind of ads you could potentially interested in. They're called interest segments, in interesting terminology. From those interest segments then, the ad net will supply an ad, send it back to the browser. Some other inputs into the profile can be, though, the news website if it has registration associated with it, information such as your zip code, your age or your profession can be fed also into the profile. And I've actually seen that happen in certain circumstances. That information sometimes goes through the browser and it's actually possible to observe that. Other inputs into the process can be, advertisers themselves can provide information about past purchases and have that go into a database and also be part of the targeting process. So we have a very complicated and sort of wide ranging set of players here providing data for profile. In addition, the ad network that does profiling can also choose not to show their own ads but then have, using what's known as a redirect, send a redirect URL to a person's browser, have that bounce off and then have yet another ad network provide ads, too. So it's a very wide ranging set of players. And another group of -- another type of vendor that's in this process are the web analytics providers who's job is solely to look at what you're doing at a website and then provide information directly to the main website, which then also can drive advertising systems. And it's possible to observe this all inside of a web browser, which is something very interesting. A lot of data collection that we see in this world is done behind the scenes, but because of the way the technology is -- the way the Internet works, it's actually possible for tech savvy people to observe a lot of these activities. It's a little bit different than the offline world. In the

offline world, we only see, kind of, the results of the tracking. Within online behavioral advertising, we -- or advertising in general on the Internet, we actually can watch all this take place. So we're having a panel shortly here that will talk about this, goes more in-depth. I do want to talk about one other data collection system, which a lot of us are familiar with, and this is sort of the offline version of -- if you will, of potentially behavioral advertising, which is the Visa loyalty cards. You know, they became commonplace maybe about 15 years ago. And what they provide is a way for online -- sorry, offline stores, regular stores, retail stores, to do tracking over time. So with a retail loyalty card -- it's something you apply for, so you sign up and provide your name and address and phone number and possibly an e-mail -- and that information then is provided to the retailer and they get back in return this loyalty card, which every time you go shopping, you present that at the cash register, many of us are very familiar with this. And that's basically -- it provides that same technology as the web browser cookie, where it provides a persistent identifier that can be used for tracking people over time. And the retailer then will provide back to the consumer various coupons and special offers and advertising based on their purchases over time. And that information is derived from the purchase history, as well as the loyalty card. What the consumer probably doesn't see in the background is all the things that are going on with that data. And one thing is, when you get coupons, those are actually forms of advertisement which the retailer gets paid for by whoever is providing the coupon. So it's a form of advertising. And there's targeting criteria, when an ad is created to match it up with individual consumers. And that's based on the profile that's created by the retailer and their data mining engine. And then information about purchases are also used by marketing departments to look at product trends -- you know, what products are hot in one part of the country versus another, what products are purchased in tandem, what products over time seem to be purchased together, and so on, and all these drive various kinds of advertising decisions made by companies, as well as product development decisions by companies. So in this process, there is many uses of data that go on, besides just providing coupons. Another very interesting aspect of this process, too are, the data pen vendors. Because one of the things you can do is, once you get somebody's name and address, you go to various vendors and get more data on people. You can get estimated household income, you know, estimated household size. And that information can then be added also into the profile and used for targeting purposes. So with that, we'll get started on online behavioral advertising. Thank you.

>> Peder Magee: Good afternoon, everyone. My name is Peder Magee, and with me is my co-moderator Michelle Rosenthal. In this panel, we're going to be discussing online behavioral advertising. Just a quick reminder, if anyone has questions, you can fill out a card and give them to one of the FTC people in the room. Or if you're watching online, you can submit your question through an e-mail to [privacyroundtable@ftc.gov](mailto:privacyroundtable@ftc.gov). Let me introduce our panelists. We have Jeff Chester, the Executive Director for the Center for Digital Democracy. Dave Morgan, CEO of Simulmedia. Melissa Ngo, who is an attorney at Privacy Lives. Zoe Strickland, who is Vice President CPO at Wal-Mart. Berin Szoka, who is Director, Center for Internet Freedom, The Progress & Freedom Foundation. Omar Tawakol, who is CEO of BlueKai. Professor Craig Wills, who is a computer science professor at the Worcester Polytechnic Institute. And Linda Woolley, who's head of Government Affairs at the DMA. Thank you all for participating. Just to set the scene for the behavioral advertising discussion, I'll give a little background. The FTC held a town hall event on behavioral advertising in the fall of 2007, and we followed that event with a set of proposed principles to guide industry's self-regulatory efforts. In February of this year, the Commission issued a report discussing the comments we received in response to the principles and setting forth revised principles. Over the past two years, we've seen a number of efforts by industry to improve transparency and consumer control. At the same time, however, there's evidence that consumers are concerned about the privacy implications of online behavioral advertising. And a number of consumer groups have called for legislation. What we're going to talk about now is behavioral advertising as we've defined it and that's the tracking of consumers' activities online in order to serve targeted ads. We're also including in that the definition retargeting, where someone visits a website and the website sends an ad on another website based on the prior visit. The definition does not include contextual ads, which Richard mentioned, or first party ads or other purely first party uses of data, such as mapping site traffic. So let's start out talking about the consumer benefits that are associated with behavioral advertising, and I want to direct the first question -- and let me just say, this is an interactive discussion, so panelists please weigh in. We may start with one of you. Everyone is welcome to weigh in. Just raise your little name triangle and we'll call on you. Berin, you've written about how online content, things like news sites, social networking sites, search engines and blogs are free to consumers because they're supported by ad revenue. Do we know how much of the free content is made possible by behaviorally targeted ads, as opposed to contextual or non-targeted advertising?

>> Berin Szoka: I know Omar is going to talk a little bit more about the technologies involved and the fact that the lines are actually very difficult to draw. But if you take a big step back and you look at advertising generally, you realize that it's not just that these things can be funded by advertising. It's that they have to be. And this is actually not inconsistent with the history of media in this country, that media and content such as you've mentioned are all things that people are generally unwilling to pay for because as we all know, information wants to be free. It also wants to be expensive. And so, you know, back to colonial times, to radio, to newspapers and to television, it has been advertising that has supported content throughout all of those media. And today, advertising is supporting both content and services ranging from search engines to applications on your mobile phone or your computer. And if you look at what advertising, behavioral advertising is funding today, it's a -- you have to think about it in two senses. Behavioral advertising as the industry usually talks about it, as a product, is a fairly narrow and specific category. And it's something like \$1 billion today of the \$23 billion of online advertising revenue. If you look at behavioral advertising more broadly as Omar will talk about, you realize that the techniques that are involved that could be affected by regulation affect a much larger percentage of online advertising. But today, online advertising for display, that is for publishers who are relying on advertising, is about \$7 billion. And just to put that in perspective, that's about what the three national newspapers earned in advertising revenue in 2007. And to put all of this conversation in perspective, we have to realize is that while many people think that we're in a privacy crisis, we're also in a crisis about how we fund media and content in this country. And the best indicator of that is the fact that as a share of GDP, advertising is down 25% from 2000. So the challenge here from my perspective is how do we make advertising produce more revenue for more publishers so that it's a more reliable source of funding? And the answer to that question I think is exactly what you asked, it's that unless you're able to use those techniques of behavioral and other targeting to tailored ads better, they aren't worth very much, and they aren't worth very much to particularly smaller websites and sites that serve noncommercial content. Because if you're limited to doing contextual advertising, you are limited to having basically ads targeted based on the key words that are on your pages -- which means that if those key words aren't worth very much, your advertising isn't worth very much, and the quality of what you can offer is very limited. And if you are offering video or other kinds of content that don't lend themselves easily to algorithmic

targeting of key words based on context, your advertising content may be worth next to nothing. So I think the central challenge is to figure out how we fund media content and culture in the future, and I think the answer to that is better tailored advertising that is more reliable for publishers, because it's not an option, it's a necessity. The simple reality is that pay walls and subscription based content and micro payments don't work. But we've been there. We were there in the 1990s. And that world collapsed, and it collapsed because of the proliferation of choices and because people aren't willing to pay for something that they can get it for free elsewhere.

>> Jeff Chester: Look, the Commission has embarked. It is a kind of distinct conversation. It's an important one, when one talks about how to fund serious journalism and investigative reporting with a conversation that we had here last week, that the FTC has now launched an initiative on those behavioral advertising panel. And I think that when it comes to journalism, I think many of us are extremely sensitive about the need to fund it. There is no reason why we have to engage in any kind of tradeoff for our freedoms in order to save journalism. There's no reason why you can't have a system of online advertising, interactive advertising, especially conducted by the news media, that, in fact, is citizen friendly. So it's a false dichotomy here. And the fact of the matter is this are alternative models, and as anybody in the industry will tell you that it's going to be a combination of on online advertising and subscription and donation, et cetera. And let's not also equate the internet, with advertising because the two are interrelated but distinct. I would rather us talk about the general issues of behavior advertising and directive advertising, than the journalism issue which does require a more distinct focus. Unless you want me to start --

>> Peder Magee: No, no that's all right. Berin, if you want to follow-up?

>> Berin Szoka: Just very briefly -- I mean, this is really the essence of this debate, is that some people think that privacy is a fundamental right and a monolith that is the same for all people and all users, and something that cannot be traded off against other values. And others, such as myself think that the world is full of tradeoffs, that every single decision we ever make in life is a tradeoff. And we have to recognize that, and we have to recognize that in a world where digital economics means that people are not willing to pay for bits because they can be generated elsewhere in their marginal costs of production is zero -- and this is what economics tells us, right? This is what we

see in the real world. And this is why free predominates. In that world, this tradeoff is of vital importance. And so the challenge is to figure out a way to make online advertising work, such that users are educated and empowered to make decisions about the specific things that they're sensitive about, so that if they are concerned about one thing in particular, they can hide that. And if they decide if they want to pay for something rather than engaging in behavioral targeting, they can do so, but not to set a one-size default for everybody that reduces the amount of funding overall. because that really, to reference what Professor Turow said this morning -- if you want to talk about an industrial imperative, which he mentioned, well let's talk about industrial planning. Industrial planning is when the government comes in and decides how much revenue is going to be available to which business models. And that's a terrible idea when what's at stake is information, culture, content, services, journalism in the media.

>> Peder Magee: As far as educating consumers, you seem to be suggesting that consumers should be free to make a choice here. And I'm wondering what would be the impact if the choice was the consumer had to give expressed consent -- what that would mean to ad revenue and in particular smaller publishers, would opting consent across the board mean that publishers had to charge for their content?

>> Berin Szoka: So in a fantasy world, in the economists' fantasy world, where there are no transactions costs and we get to make all of our decisions with full information and there's no limit to our time and our attention, the answer would be that it wouldn't matter. It would make no difference. Opt in, opt out would produce exactly the same result and this conversation wouldn't be worth having. We could just do it. The problem is, in the real world where we have tradeoffs and limited time and limited information, these defaults matter hugely. And the reality is that if you set an opt in, you could end up having 10% or less people opt in, and you could have exactly the same percentage of people opt out and it doesn't reflect people's real preferences. What it reflects is the fact that people for many cases just don't care that much about what's at stake and the hassle of having to go through the opt-in process is itself a huge cost. It is a barrier to entry that when we're talking about digital economics where the costs of production are zero and that there are so many choices out there, setting that sort of a threshold could be catastrophic, not necessarily for the biggest companies, the biggest players out there, but especially for the smallest ones. So what's at

stake is not just how much funding is available, but how democratically is it allocated? How well does it reflect the preferences of consumers? To what extent are consumers able to vote with their attention? Is their attention actually going to be worth something in terms what have publishers are able to essentially sell it for to advertisers? So that makes a huge difference, and it also makes a difference in terms of competitiveness. All the concerns that Commissioner Harbour raised earlier today talking about this land escape of online advertising and Google and all the companies involved, that -- that landscape will become less competitive if we have restrictive regulation. It will become more competitive and there will be more publishers competing with each other on privacy terms if they're able to compete. And if you set a default mandate, you're going to wipe out a lot of the competition.

>> Peder Magee: Well that's an interesting point and I want to give some others a chance to weigh in here. There seems to be a tension based on some of the studies we heard about this morning. It appears that a lot of consumers are very uncomfortable with the idea of being tracked online and having their behavior used to target advertisements, and I'm wondering how we square that. And Linda, perhaps you want to weigh in.

>> Linda Woolley: Thanks Peder. Yeah, I do want to weigh in on that point and I think it's important to talk about the state of the internet now and what consumers are doing. Right now, right after Cyber Monday, the numbers -- some of the numbers are in. Not all of them will be in under the end of December. But close to -- very close to 100 million people made online purchases on Cyber Monday. 100 million people is 1/3 of the population of the United States. That is pretty significant. All morning, the conversation has gone around this idea that if consumers just knew, they wouldn't be doing -- if the consumers just knew "blank," they wouldn't be doing "blank." Consumers do know. And they know because there is -- there are things like the Google program, there's the Yahoo! program, there are programs on every major browser that's out there that enable you to just get rid of your cookies, completely. You can opt out of all of the major databases, data collection agencies that are out there currently. You can do private browsing on pretty nearly every major browser that's out there. If you really are familiar with ad networks and you want to go to the NAI site, you can opt out of all of those. So if you're of a mind to do private browsing and do

everything anonymously, the tools are out there to do it. And as I say, I mean, I think we have to pay attention to that 100 million people who made online purchases.

>> Peder Magee: I think that's a good point, but it also seems to put a lot of burden on the consumer to find out about these practices which really are not that transparent. I think for the more sophisticated online user, perhaps they're aware of tracking and things like behavioral advertising. But I suspect for a large percentage of the population, they have no idea this is going on and perhaps then would have no idea that there were tools to control it.

>> Linda Woolley: One of the things that DMA has, that we have had, the Direct Marketing Association has had for a number of years now, is something called [dmachoice.org](http://dmachoice.org), which actually is mail preference. But we are actively engaged in conversations about building DMA choice out so that it includes online preferences. And you know, I think that that really does have the capacity to be a global opt-out in a way that certain other tools that are out there now are not. The other thing is the issue of education. And we heard consistently this morning that there is a great need for consumer education, and we couldn't agree more that there's a great need for that. You mentioned the principles that the FTC did in February. A group that DMA and others convened in response to that -- those principles also came up with a set of principles. And one of the principles was education. So I think everybody agrees that more and better education is necessary.

>> Michelle Rosenthal: Thanks Linda. We're going to move into some of the privacy risks associated with behavioral advertising. And we got a question from the audience and I think it's an interesting question that might be able to frame the discussion a little bit. When will we admit that privacy is gone, that technology is too powerful, and that consumers should be advised that once they opt in to the internet, or use a mobile device, all their info, including health and financial info will be readily available?

>> Jeff Chester: I think that's a good way of starting it, because as I said, behavioral advertising as we all know is just one small part. And Pamela Harbour -- Commissioner Harbour spoke about it in -- and the consumers are under siege. It's one small part of this incredible interrelated data collection apparatus for profiling, tracking and targeting. Very few consumers know about it. The

industry hasn't been candid with the Federal Trade Commission or the Congress. They haven't been telling the public the whole truth. So right -- and we're at a critical moment here because we have now seen the emergence of targeting 2.0. As Professor Turow talked about, ad optimization, real time targeting, data exchanges -- the so-called distinct silos are all collapsed and you can buy offline and online data instantaneously and target. And none of the 100 million people that participated online, if they knew how their data was being collected, how their profiles are being created, how their ethnic information, how their sexual information, how their economic information, how their --

>> Michelle Rosenthal: Jeff, let me ask you a question, 'cause you're talking --

>> Jeff Chester: What was, in fact, part of the profile, they would begin to object strongly, as they will, as the commission to do its job.

>> Michelle Rosenthal: Maybe you could talk about -- you mentioned that there are groups that are targeted based on age or ethnicity or race. Could you talk a little bit about that? Are there examples that you might be able to provide?

>> Jeff Chester: Absolutely.

>> Peder Magee: Jeff, can I just stress that we're trying to have an interactive discussion here, we're not doing speeches, okay?

>> Jeff Chester: I know we're not doing speeches, but I also think it's important, and I told you this at the beginning. I think it's very important that the commission convey to the public and people who are watching this perhaps online, what the broader apparatus is here. Not just reduce it to the -

-

>> Michelle Rosenthal: And the best way to do that is to maybe provide examples of some of the --

>> Jeff Chester: but I also think it's important to sort of say what the industry is saying, and I want to read this very briefly from what the Winterberry Report on interactive advertising apparatus from October 9th, 2009, which I supplied the commission, just said. Our "contact information is now collected at virtually every step in a user's online experience via registration pages, for example, and web surfing behavior is tracked down to the millisecond providing publishers and advertisers with the potential to create a reasonably complete profile of their audiences. And this enables the matching of a user profile to enable robust segmentation --"

>> Michelle Rosenthal: Jeff, do you have any examples of groups being targeted based on their age or race or ethnicity? You talked about that as a concern. So maybe could you talk about that. Thank you.

>> Jeff Chester: First place, of course, the US and City D. has found as I'm sure other consumer groups have found in this proceeding and over the last few years, many, many examples of targeting of children and teens and persons of color, and indeed we're going to be calling on the commission to open up a separate inquiry into how multicultural communities are being specifically targeted here as Hispanics and African-Americans. And --

>> Michelle Rosenthal: Maybe we can get into another --

>> Jeff Chester: Listen I can give you, -- I brought many, many examples. But, for example, if you want to target African- Americans or if you want to talk it by race, there are plenty of behavioral targeting networks that do that. If you want to target Hispanics, and you want to target Hispanics of X, Y, Z behavior, you can do that all online. No person has been asked, "Can we use the fact that you are on a Hispanic site, or we think you're on a Hispanic site?" No person has said that they want that to be part of their targeted --

>> Michelle Rosenthal: Okay, but are we talking about contextual here, or are we talking about behavioral?

>> Jeff Chester: No, we're talking about behavioral. You can buy Hispanics, you can buy African-Americans, you can buy kids, you can buy teens, you can buy anyone to target them, all across online and in social networks. And no individual user knows anything about it. And if you want to see just one good example, a series of examples on how our youth are being targeted and how it's linked to the obesity crisis in this country, which is costing us billions of dollars a year, just go [digitalads.org](http://digitalads.org), which is a site we operate about interactive advertising and youth obesity and see what the companies are doing, including many members of the IAB and the DMA.

>> Michelle Rosenthal: Okay, maybe we could -- does anyone else have any -- have a response to that? Omar?

>> Omar Tawakol: Yeah, I mean, in the main, a lot of the concerns he's talking about I'd have to agree with, which is there are certain sensitive topics that absolutely something has to be done about it. So, for instance, do you really want someone to know what potential disease you're researching are? Do you really want people to know what your religious preferences are, your sexual preferences, whether you like alcohol or gambling or porn? There are a lot of topics that I think it's very clear consumers, A, don't know. And they shouldn't be targeted for those, and there should be some sort of standards about that. The way we --

>> Michelle Rosenthal: Who should set those standards?

>> Omar Tawakol: Part of setting that standard is the way we approached it at BlueKaI is to say, BlueKaI is not going to decide for you. We're just going to embrace the concept of complete transparency. So two years ago when we founded the company, before we went live with anything else, we went live with a tool that said, if any data is ever going to be shared, it's going to be completely transparent in this tool, and it will be linked to by people who would work with us. And so we're kind of letting the consumers decide what sensitive is after a minimum bar is set by the industry. So a minimum bar would say, look, this is clearly sensitive to almost everybody, but beyond that bar, I don't think it's our position for determine what may be sensitive to me may not be sensitive to you. And the real solution, I believe, is to put a spotlight on it and to make it completely transparent. Now, I understand that we came out, BlueKaI came out with a

registry before Google and Yahoo! did, but who knows BlueKaI out of the consumer world right? So better than that, Google and Yahoo! came up with one, so a possible objection would be what if 55 or 500 different companies have these tools, how will consumers know about them? I agree that's a problem that needs to be solved with more innovation, but I think transparency is the most important step that we can give to empower users to play with this. Because the comment that was made on an earlier panel was, by the gentleman from Google, and we've seen this in our own data, is that when people come to use these tools, they don't opt out in the percentages that you would expect. They end up interacting with a tool, and in our case, they get charity for doing so, but the more important thing is that if you allow innovation around transparency, I think it will help to clean up the behaviors.

>> Michelle Rosenthal: Do you think that's gonna happen on its own, or do you think the companies need an incentive in order to -- So for example, whether it be a company being more transparent or actually defining sensitive data and staying away from sensitive data, can they do this on their own, or do we need to set some type of standard, whether it be through self-regulation or regulation?

>> Omar Tawakol: I do think sensitivity does require some standards. I think the industry can create that, but somebody has to. And I would say that your the FTC's involvement and the government's involvement in this issue has produced some good results. Now, I am a big fan of self regulation, but a little bit of a whip has helped in my opinion.

>> Peder Magee: Let's give some other folk as chance to weigh in. Dave?

>> Dave Morgan: The point I would like to make is that -- I'll sort of follow the question that has come from the audience, which is does opting into the internet mean that you opt out of having your privacy protected? And I think -- I would hope all of us agree clearly not, and that this notion that your privacy is gone, get over it, that's not an appropriate kind of response. However, a lot of what's happened or is happening out there is not in our control. And I think particularly if we look at the media driven marketing world, advertising as we know it, the internet is changing, and it has changed fundamentally, and it will never be the same again. Most of us, certainly in younger parts

of our lives, were part of what was a world where media was controlled by distribution. Analog media is all about scarce distribution, seen it in scarce licenses, scarce printing presses. And it was, quite frankly was a vertically integrated monopoly. Sometimes regulated, sometimes not. There were gate keepers and it was not very democratized and accessible. The internet has changed that had forever. Now distribution is not scarce. Attention is scarce. And we have a world that's flattened out a lot. We have a lot of new practices we've never had before. We have, now that small market participants can play, we have a lot of co-dependency with other companies, which bring in a lot of sharing of information and a lot of interdependencies, a lot of inequitable bargaining powers between them. We could sit and argue as to which was better, the big corner office and the media tower downtown, or this somewhat crazy anarchistic difference, but we're gonna have to deal with it, and I think one of the most important things is that I don't think you hear from anyone in the industry that there's not a willingness to do a lot more. And I think having been here two years before, we've seen a lot of progress. Clearly we're a long way from having a lot of answers to it, that I think the ultimate answer to that one question is it doesn't mean people have to leave privacy, and we're gonna have to find a lot of ways, combinations of industry self-regulation and government support.

>> Melissa Noe: I want to go back to when we brought up the fact this is putting a substantial burden on consumers to make these choices and some consumers out there do have knowledge of what's out there. They have the knowledge data collection and in the panel right before ours, I think Joel Kelsey said that the top two Firefox downloaded add-ons had to do with privacy, had to do with blocking the data collection. So some people out there are making these choices. But there are a lot of people out there who just don't know that this is happening. You can have this conversation at any dinner party, and most people there will say, what do you mean that's being collected, I don't understand, what am I supposed to do? Putting this substantial burden on consumers is not the right way to go about it. Let's again also talk about sensitive data, because it's been brought up. When you look at the industry principles that just came out a few months ago, they say that sensitive data is, one, personal information of children under age 13 and, two, financial account numbers, social security numbers, pharmaceutical prescriptions or medical records about a specific individual. And also, the principles do allow for the collection and use of the second category of financial account numbers, social security numbers, medical information. If

a user consents to the collection and use. Again, this is a question about what happens in terms of, does the user understand? We've seen what some of these privacy notices look like. They're confusing. They're long. There are a number of people who are very aware and very polished in terms of understanding these issues that really don't understand what some of these privacy policies even mean. So that --

>> Peder Magee: Melissa, can I -- I want to weigh in on that. On the sensitive data issue, we heard a lot about that this morning. And it's a very challenging concern. It seems very subjective, what's sensitive to one person and is not always sensitive to another. In fact, I'm reminded of an example a friend of mine made the other day where he said -- he's bald -- and he said that the fact that he uses Rogaine is not sensitive to him, but the fact that his elderly grandmother does would be very sensitive to her. And I think it sort of highlights the fact that sensitive to one is not always sensitive to the other. And because it's so challenging to define this and draw lines here is another approach to look at it from the perspective of limiting uses of data so that you say you can only use this type of data for the reason it was collected, or perhaps limiting the amount of time it's retained or giving consumers access to the data to see what someone has about them.

>> Melissa Noe: Yes, we do want there to be a focus on the fair information practices and the OECD principles of data collection limitation, data quality, purpose specification, use limitation, as well as security safeguards, openness, individual participation and accountability. And we can say that people will collect the information, they'll only use them for a specific purpose, but then we move into accountability. How do we know? How do we know that the data being collected and used is only being used for the specific way in which a consumer has opted in to using it? And I believe that it should be opt in, not opt out.

>> Michelle Rosenthal: Melissa, maybe we can talk about -- We were hoping to talk about some of the other risks involved, so in addition to sensitive data, what about the contention that some companies actually use tracking information to red line? And that's a term used which basically means to discriminate -- to offer different prices based on past browsing activities. So basically price discrimination. Is there any evidence of this or is this a concern that we should be worried about?

>> Melissa Noe: Okay, well, Jeff will have the examples.

>> Michelle Rosenthal: Jeff, maybe you can provide an example of this.

>> Jeff Chester: I do think that there's no question that if you look at the literature, the industry is talking about in retargeting one person being low income, one person being middle income, one person being a much better target. There's a lot that we don't know, but what we do know is that the online data collection process has been used to identify people, and then to make them offers which I believe, particularly in the financial area, were likely unfair. Online lead generation triggers played an important role in the subprime crisis, offering certain people a bad loan, a higher interest loan than other people. It's something that the FTC still needs to look at, and the whole area of loans and credit cards and the kind of offers people receive, and online regeneration and triggers and what the decisions are being made about individuals once again is completely nontransparent. An area of health, and we're glad the FDA has finally gotten to regulate the social media and interactive marketing space, we will be filing soon. Let me read you just briefly a case study --

>> Peder Magee: Jeff, actually, I want to call on somebody else.

>> Jeff Chester: Let me just finish because you asked me to give you examples, and I did bring examples of targeting African-Americans, targeting Hispanics, targeting health, which I can read to you from their own words. And this is Lunestra, a sleep aid where people first found out about it because it was "an unbranded website," and they ended up with a 2 million person database so people could be targeted for this prescription drug. This kind of thing is harmful to consumers.

>> Michelle Rosenthal: Okay, let's talk about some of the other consumer harms. We've heard about the concept of boxing where consumers, rather than being offered different prices based on their past browsing activity, they might be offered different products or services based on their browsing activity. So for example, I used to be a big college football fan until the Gators suffered a miserable defeat on Saturday. So let's say I was a college football fan my whole life, but I no longer am a college football fan, but I'm still getting ads about college football because I am pegged

as a college -- Omar talked a little bit about what BlueKaI offers. I can go on and I can decide that I no longer want to be considered by BlueKaI a college football fan, but maybe we could talk about the bigger concept of boxing, and sort of this idea that consumers are not actually seeing all that's out there because they're actually -- their choices are being limited based on their past browsing activity.

>> Male Speaker: The landing pages -- I want you guys to talk about this. You, too, Dave. The landing pages, the conversion testing, all the things that are done to personalize. There's a down side as far as I'm concerned to personalization. We want personalization, but the down side -- and the down side is that it was what Joe Turow really talked about today that we're going to see increasingly, that it is something created just for you, and you have no idea why, nor have you given your consent. There's no question that is the trajectory that we are headed towards with this system unless we implement -- unless the FTC implements a digital age fair information principles to restrict the collection and use of this data.

>> Melissa Noe: Aand when we talk about accountability, I'm sure the industry will point to the principles, again that they just released. However, when you look at the principles, there is no real enforcement provision. What happens is that there is self-reporting of violating the principles, and then if one is found to have violated these principles, it's public reporting. Those are the sanctions for violating these principles. So when we talk about this, I really, really want to focus on the fact that unless we have strong legislation, there is little accountability out there.

>> Michelle Rosenthal: Linda, maybe you could speak to that. And then Craig, we're gonna get to you in just a second.

>> Linda Woolley: About the issue of accountability, for the last 30 years, this direct marketing association has had a self-regulatory program. It covers all channels of marketing, not just online. It covers mail, telecommunications, mobile, whatever channel people want to use. The program is active, robust. We've gotten just this past year alone over 3,000 inquiries. Those are handled either by one person who is -- the one person who handles the telephone calls can sometimes just dispose of them with information and education and health. We also have -- some of those stern into ethics

cases, and those are handled in a very judicial-like way. The case is opened. There is an opportunity for both sides to present information, there are time limits built into the information gathering, and then there's a ruling. Cases that are clear violations of law get referred routinely to the Federal Trade Commission. We enforce not only against DMA member, but whatever marketing channel happens to come to us. We also have an exemption that has been long-standing by the Federal Trade Commission that enables us to do business-to-business complaints. It's an antitrust exemption that enables us to do business complaints, as well.

>> Michelle Rosenthal: Thank you, Linda. So we want to move to a different area, and that's something that we've talked about already on this panel, and that's consumer control. A lot of the panels here have discussed that consumers have the ability to control the data collection and that if they want to, they can go on and they can delete their cookies, or they can change their browser settings. But Craig, maybe you could talk about some of the ways in which consumer controls are actually circumvented by various entities.

>> Craig Wills: First of all, I'd like to say that people have suggested earlier, Baron and the group made, Linda, that there are tools out there, and they'll solve all the problems. If we used the tools -- as a computer scientist, I've used these tools. These tools have implications. They protect some amount of privacy, some amount of information going to third parties. That doesn't mean they prevent all of it. And they also have side effects that, in some cases are very unpleasant. They're so unpleasant, they drive all but the most extreme uses away from it. If you use noscript very long, you have to be very committed in lots of ways in terms of turning off stuff. In terms of stuff that we have studied and ways are being circumvented, there's talk about first party, there's talk about third party. One of the things that we've tracked over many years is the increasing use of that third party providers are actually serving content, serving cookies via first parties themselves. So users who think they use third party controls within the browser, they're not even controlling all third parties. There is content that is going through the first parties that the first parties are letting third parties basically use some names within their domain. It's been brought up a few times about Flash cookies here. It's something that there are a different kind of cookie that are available. This was brought to light over the summer by some folks out to Berkeley that cookies are being respawnd -- traditional cookies being respawnd via these Flash cookies. There was news about this, one of the

companies that was pointed out then went ahead and changed how they worked, but it turns out that in looking at this, the last few weeks, all we've done is -- there's still ways to link old copies of cookies to new copies of cookies. So, in a sense that issue has not gone away.

>> Michelle Rosenthal: And could you talk a little bit more -- Flash cookies, why are Flash cookies such a concern? Are they --

>> Craig Wills: Well, Flash cookies a concern, because they're not controlled in the same way that a traditional cookie within the browser is controlled. And any changes you make in your browser settings to control cookies have no cookies over Flash cookies. And to my knowledge, the NAI Opt Out and any of that stuff has no control over Flash cookies.

>> Michelle Rosenthal: And one more question and then we'll get to your comment, Jack. We've also heard that even if consumers actually go into the browse and they delete their cookies or they don't allow cookies in the first place, that there is tracking that can go on through the the IP address and the user agent data. User agent data includes the operating system on your computer and your browser version. And so we've heard about research that if you include the IP address and the user agent data, you can track someone even without a cookie. Is there any evidence of this and can you maybe speak to that subject?

>> Craig Wills: I think there is evidence out there that companies are constructing as much information as they can about browser type, browser version, configuration within the browser, that enough of that information is strung together becomes -- along with IP address that doesn't change very much -- can essentially identify, uniquely, a particular user or a particularly browser, which then, can be linked to multiple accesses across different sites.

>> Michelle Rosenthal: Okay, Jeff? Do you want to --

>> Jeff Chester: I think, I still think it's very important to understand, you cannot look at behavioral targeting in isolation. This is a system of influence. This is a system of persuasion. That's how it works. It's not just the cookie. It is the other online interactive applications that are facilitating the

collection of information. But I wanted to raise -- I wanted to discuss what the industry is claiming, that all of this is non-PII, right? In the new campaign, in the self-regulatory initiative, which frankly, doesn't really inform consumers about the process, let me just read to you one paragraph from Microsoft's new guide for online advertising. Quote, behavioral targeting works by analyzing individual consumer behavior to establish patterns, and then using these patterns to assess likely purchase intents. And another document that Microsoft made available to advertisers talks about online can meet more needs than offline media, including the psychological needs. This is a very powerful system. You have to see the system in its whole context to understand the data collection strategies and what the implications are to protect consumers, especially when sensitive information related to health and our finances are such an important part of online advertising expenditures. \$3 billion was spent last year from the financial services industry in this country targeting consumers online for mortgages and loans. What happened? The FTC needs to go under the hood to understand how the online targeting of financial service products is affecting consumer welfare.

>> Peder Magee: Thanks. I want to change gears a little bit, and I've got a question for Dave. And Zoe, I promise we're going to get to you, next. Dave, you've written a bit about the increase in available online content and how that's affected supply and demand for online advertising space, and also about how ad exchanges and the term you used is, "the daisy chain" operates. I wonder if could you talk a little bit about that and highlight some of the privacy implications from that?

>> Dave Morgan: Sure. So, as I mentioned before, with certainly a network media marketing world, though it's very democratized, it now creates a lot of interdependency, so there's a couple of, sort of, the realities of what's happening out there. Most media's pricing currency has historically been on the impression. How many people do you reach, how many advertisements can you impress on them will they see, and then some factor of pricing against that. What we've seen online because, we don't have physical barriers to distribution, and you can have sites like Facebook that can have 350 million users for a five, six-year-old company, maybe, I guess it's younger than that -- scary -- are that the number of impressions, the number of opportunities to be able to deliver ads to people is no longer scarce. The actual just an impression, being able to say I will reach 50 million people in the next month. It's no longer scarce. It's no longer price-tied. So, it's been talked about

before, in a marketplace where someone's producing content, and wants to be able to monetize it to pay their reporters or their journalists or their bandwidth costs, they've got to find ways to pay for that. And in most cases, almost all cases I would say, so their own that's not possible anymore. Requires dependencies. And so in most cases you need to be able to work with other companies that may be able to reach advertisers you can't reach and hopefully those advertisers have a higher rate. You may work with companies that have data on that browser or data on browsers like that or data that relates to the vertical segment that you're operating in. Otherwise you're not going to be able to get the kind of rates that were more consistent with media as it was done before. And this is for the good and the bad of it. I mean, the good is we have a lot more people producing a lot more content for a lot of others, but now we have a lot more people that touch the ecosystem. And so one of the things that I've said and I think it's really critical here and this is why I think it's important to note the steps the industry has taken over these last two years, which have been the potential for harm is certainly significant. The amount of data that is moved, and as you mentioned before, is it possible to technically tie internet protocol addresses and other data to be able to get closer to identifying a particular person or a particular device? Absolutely. And I think one of the most important steps the FTC has taken, it hasn't been probably promoted as much, is essentially moving away from the personally identifiable information standard to a broader, and I would say, more appropriate, standard of being able to relate information to a particular individual or device.

>> Peder Magee: Can you talk about, in terms of, how that affects as publisher, specifically whether a publisher knows who is collecting information on their site, how many different people. Richard highlighted in the diagram the idea of somebody having the ability to serve an ad but passing on it, dropping a cookie, and giving it to another entity.

>> Dave Morgan: So, I would certainly -- I would commend Richard's charts, everybody. I think they're extraordinary, particularly in light of the overall ecosystem. But, as you might know, for those that can talk about the fact that browsing doesn't work as well with scripts turned off is that, it's an interdependent economy. There may be 20 different scripts or cookies that are running on any webpage to make it work. Different content providers, different analytic providers, different advertising providers. What's also happened, so that a website can be paid the most possible for any ad, is that when they hand an ad unit to another network or a third party company like a Yahoo

or a Google, it may be conditional. It may say, "you can look at this one and if you have an ad, place it, if not hand it to another party and then hand it to another party, and then hand it to another party." The level of control starts moving away from the publisher, where the person first came to. Now, that brings this balance, which is if the publisher can't deal with third parties, then they can't pay for content on the site and maximize the revenue. But then the balance is if you go down to third parties, you may have seven, eight, ten different companies that a chance to put a cookie on a browser to determine what's the most appropriate ad. And this is why I say, what we can't change is that there is now this interdependent ecosystem. I think the question is, what's the right balance of bully pulpit from the FTC, strong enforcement to prevent things going wrong in the direction of some of the standards.

>> Peder Magee: I want to play off that idea about control and direct a question to Zoe. We seem to be focused the paradigm where it's a content publisher, but Walmart is a retail publisher and I'm wondering what sort of control Walmart is able for exert on the entities it contracts with for behavioral advertising.

>> Zoe Strickland: Yeah. I do think that there is a distinction with how are you dealing with third parties on your site, be they for OBA purposes or just basically, serving your website and all the functionality it includes. And that's been the case since B-to-C websites first arose. So there's a very different set of folks who help you deliver your website and all the platform that goes along with it, a different set of folks who help you with your online advertising and that can be first party or third party. So it's very distinct and I want to make sure as we talk about these things, we think about them in a sort of bucket sort of fashion and say what's the underlying principal that makes sense there for those. And I do think it's very much in the publisher's interests to make sure that they -- you talked before about the different players in the ecosystem and what they're bringing to the consumer relationship. Publishers are the ones that have the face of the consumers. We need to make sure that we don't delegate too much to the folks who are technology experts to build all these things. We need to message it to our consumers in a way that they understand, because businesses really don't want to upset their customers. They really do want to do the opposite. I want to bring back a point, I think that Michelle made, about technologies. I almost think there's two pieces to the question. And one is the technology and the fixes. And how do we make sure

that if folks opt out or opt in or whatever they've done, that there's compliance with that. And I think that's not just true with OBA, that's true with other things. You're doing E-mail marketing, you're doing telemarketing, whatever the case may be, how are you doing e-mail marketing and not getting phished, there will always be ways that you have to make sure technologically that you have delivered what you promised. I think there's a lot of good industry efforts out there to make sure that industry can deliver what they said they'll deliver to consumers and to police that, but a second issue is besides the technology and the compliance feature, is how are we communicating to our customers? How do they understand it? What's the right defaults? First party, third party, they are different. For Walmart, when we launched our privacy policy, we did a mixture of opt in and opt out and then the other folks here who have Dashboard, we have the same thing, the people get on there and play with it. So, there are really sort of different issues where the policy should be and then, how is the compliance behind it?

>> Michelle Rosenthal: Zoe, I have a follow-up question to some of what you're talking about. We hear, sort of, two different things. We hear -- sometimes we hear that publishers have a problem exerting control over the different entities that they're working with for behavioral advertising. So in terms of negotiating -- you know, if you want to negotiate terms about the collection of the data and the use of the data by those third parties, it's sometimes difficult for publishers to engage in that. But then, on the other hand, we see, for example, where Walmart was able to exert a lot of control on green issues. So, Walmart said these are the standards and we want you third parties to comply with, and we won't work with you unless you do that. So, can you talk to us maybe about where on the spectrum publishers are when it comes for these sort of privacy issues? Are they able to exert control? Are they able to tell the people they work with, "look, we're walmart, we're not going to work with you unless you do this," or have you found it difficult in actually expressing how that data should be collected and used by the third parties you work with?

>> Zoe Strickland: I think historically, when publishers work with third parties and with folks who are experts in the technology and the ad space, is you look at a result, which is, how am I making sure I reach my customers effectively, and so you look to those principles and say, "how do we do that?" We need to do a better job of understanding what the technology is behind that. So what cookies are being placed, are they Flash cookies, are they regular cookies, how are we following

industry standards, and one thing I think is not in our customer's interests is when like, for instance, your standard contract clause will just say "comply with laws," that's not good enough. There's a lot of industry stuff out there. Just complying with laws doesn't even scratch the surface on what we're doing here. So I think publishers need to step up more in terms of the delegation that's gone on.

>> Michelle Rosenthal: Okay. Omar?

>> Omar Tawakol: I just want to talk about -- when we think about what third party cookies are used and behavioral advertising, there's some confusion, and that is, usually when we're talking about it, we're saying that you know something about someone from the profile, you're delivering your ads to them somewhere else. But the majority of third party cookie use for targeting actually isn't traditionally called behavioral advertising. What I mean by that, is something like conversion optimization. So an advertiser buys a contextual ad from a newspaper site. And the newspaper site thinks they sold them a contextual ad, and they did. But that advertiser needs to put a cookie to see if that contextual ad performs and results in a sale later. Sometimes they buy even CPA advertising, which is to say I'm going to put this ad up now, but I'm not going to pay you unless they buy on my site. These methods dominate the revenue stream in display advertising, so we participated in a survey that was actually implemented by the IAB, and the full results have not been released yet, but to give you just a sense of it, what we found is that 68% of all agency dollars use some sort of conversion optimization. Another 43% use frequency capping. Frequency capping is a technique in which you say "I'm only going to show you these ads five times. Therefore, I have to track how many times I showed it to you, which goes into your individual cookie." So, these techniques dominate about 70% to 80% of all the money coming through display advertising. They require a third party cookie, and they require the level of tracking that you would have called behavioral advertising. And they fund the content, and in many cases, the publisher who sold that piece of advertising wasn't thinking of it as behavioral.

>> Michelle Rosenthal: Right. Okay. Berin, let me -- yes, go ahead.

>> Berin Szoka: I just want to briefly -- I swear -- touch on the points that these three made and to say that really, if you remember one thing today, you should remember the point that Dave made, which is to put it in shorter fashion is that the commodification of attention. Right? So if attention and advertising is what funds content, the problem that Dave described is that there are so many sources now for advertising that the rates everyone is getting is plummeting, right? And that's why traditionally ad supported industries, like journalism, are being so challenged. So the central dilemma that we face is, if advertising, if our attention becomes commodified, become something that's worth essentially the same almost everywhere, how do we make that more valuable across the board, right, and how do we increase publishing revenues for everybody? And so there I want to just give you four quick statistics. The first is, just to put this all in perspective, that in 2008, I believe, newspaper advertising revenue online was \$3 billion. Out of a total advertising revenue of \$39 billion. Now, just think about how much time you think people spend online versus reading traditional papers and you'll start to see that there is an enormous disconnect there and a huge problem as newspapers are increasingly moving to screens. And the problem is basically that the digital -- the dollars in the real world are being replaced with cents in the online world. And the best way to think about that is to look, as Dave said, at the impression rates. And if you look at those, and Howard Beale's here is in the audience, he did a great example, great work in charting this, if you just compare those in, traditional media, you talk about four, ten, 20, sometimes even 50 dollars per impression. Online, put those in cents. You're generally talking about less than a dollar per impression, right? That's the central problem we need to talk about here. The third statistic, very briefly, is advertising in general, online advertising -- 7% of total U.S. advertising, right? Above a shrinking pie, a pie that is significantly smaller than it was last year and it was in 2000. And it is now at its smallest point since 1976. But of that 7%, 45% of that goes to search engines. So for all of you in the room here that think that Google is too big, well, 45% of revenue goes to search engines. So what I'm really concerned about, I mean Google offers great services, and it's valuable to every one of us, and I want them to make more money. I also want publishers who depend on display revenue to make more money. What do they get? They get essentially a third of total online advertising spending, which goes to less than 3% of total U.S. advertising spending, right? These are the statistics you need to think about in understanding the what the challenges for publishers, because you know, consumers have many values. Privacy is one of them, but getting content and services is another, and that's what it depends on.

>> Michelle Rosenthal: Thank you, Berin --

>> Peder Magee: Can I ask about -- Zoe, I'm interested in just what the return on investment is for behaviorally targeted ads as opposed to contextual ads. Maybe you can talk about your experience with that. I've heard a lot of statistics, but it still seems to me that it's unclear how much more valuable a targeted ad is versus an ad I get related to sports because I'm on a sports site.

>> Zoe Strickland: Thank you, Peder, and I do think that's a very valid question, a return on investment, which is typically how businesses tend to think about things, which is much deeper than just dollars and cents. As you think about it, OBA is really just another tool that you can use to reach out to customers and to serve them. And, yes, I think that it's been pretty demonstrated and I think most folks would attest that there is a lift based on OBA ads versus contextual ads. But when you look at that as a publisher, I mean, you weigh that against the costs of participating in the OBA, whether or not being part of a network -- do you want retarget on your own web site, and what's the value of that? And then also consumer desires. Businesses really don't want to annoy their customers, so how do you really understand what they want. I think the survey data, the education efforts are enormously important. And then you look at it in the context of your business model, which is an e-commerce site versus as an example, the journalism sites that we've talked about that depend on ad revenue to a greater degree for their content. I don't think there's any magic to this. I think that OBA is just one more example of a different tool that you reach out and touch your customers with. We can certainly give an example in our offline where we've talked about hey, we want to customize coupons to you and what we've seen there. Be very happy to talk to that, but I think web sites existed before OBA, and I think they'll exist afterwards, depends on what that would look like, but I think given the interest in this topic, and the attendance here, it goes to show that OBA has some real attention to it and value to it.

>> Male Speaker: Peder, if I could add just one sentence to that. This is the fourth statistic I meant to add. There's a lot of data out there, it's hard to say, but the difference could be up to ten times as great for some publishers. So the delta we're talking about here is not small.

>> Peder Magee: Are you referring more to the long tail of the internet, the small publishers?

>> Male Speaker: You're exactly right, you have to look at the major publishers versus the smaller ones and the difference gets bigger the farther out you go. But if you look at increases in click through rates and the other metrics that are used to track the effectiveness of advertising, for the first year publisher, things like newspaper websites, the difference may be relatively small. It might be only twice as effective, twice as revenue producing. For small sites, it could be in many cases up to, again, a lot of data out there, but it could be up to ten times revenue producing. So it's hard to see how this all plays out in the aggregate, but we're not talking about a 5% or 10% improvement, we're talking about several factors of revenue. And that's why the stakes are so big here and why the changes in defaults and regulations make such a big difference.

>> Peder Magee: Omar's got something and maybe you could also, after your comment, we could talk about what sort of research we need in this area to pinpoint this a little bit more.

>> Omar Tawakol: So just to add one level of precision I don't think you want to compare behavioral advertising just to contextual, because I'd say about 70% of the internet impressions are very low in context. And that type of inventory goes to what we call run of network pricing. Run of network pricing tends to be in the tens of cents. And typically when you use reasonable behavioral data to sell a campaign to an advertiser, it's going to be anywhere from the \$2 to \$8 range. So you're lifting inventory that would be anywhere from like 10 cents to 50 cents to \$2 to \$8 when you're talking about applying data to a run of network buy. So that was the first comment I wanted to add, I'm sorry, and the second question was?

>> Peder Magee: I'm wondering if there's research in this area that needs to be done to get a tighter handle on the value of behaviorally targeted ads versus non targeted.

>> Omar Tawakol: I think there's a lot of data already on there, but the type of research that I think that's interesting, I know that there were some groups -- I know the IB started doing this, hasn't finished yet is trying to take the dollar that comes from all the agencies and break it up and say what percentage of the dollars and campaigns go to each technique within behavioral advertising.

Retargeting treated differently than campaign optimization, frequency capping, third party data targeting, demographic targeting. That survey and that analysis, IB, I think, would be very useful once it's complete.

>> Dave Morgan: Peder, I would add one thing, and I would support the numbers that Omar referenced, having been in the industry for a while. It is about a -- 10X is actually a pretty good way to think about it. It is different, and I would say the couple of areas which I think, I don't know how much research has been done, but not all content supports the same. In other words, if you public automotive content or travel content or technology content, well, that's much easier to support, and the context alone represents a lot of value. Having originally come out of the newspaper industry, I'll tell you the kind of content that supports the worst, and it's news. News does not carry a commercial value to most advertisers such because it's also a little scary. It could be a plane crash, it could be a murder, it could be crimes, things that people, advertisers don't always want to be associated with. And in that case, typically, it's much more than ten times as much. One of the problems, for example, some of the traditional journalism companies have had is that 80% of their page use and their impressions are on this generalized news. A very small amount is in automotive or high areas. So they're overweighted in their dependency. And this has been -- I think, as everyone knows, the IAB and the DMA in having tried to push through a lot of these standards, one of the biggest problems was to get all the individual publishers to be willing to sign up for a lot of self-regulatory standards and principles because they feel so dependent. But it's the reality we live in.

>> Michelle Rosenthal: Thanks, Dave. I'm going to switch gears and ask one question that came from the audience, and then I think, Peder, we'll wrap up. So we hear a lot, even though the FTC behavioral advertising report that came out back in February, in the report we talked about we're not going to make a distinction between PII and non-PII, yet we still see industry making that distinction when it comes to privacy policies and notices that they're giving to their consumers. We still see notices that, oh, we're not collecting your personal data, or this can't be used to identify you. So even though -- no distinction, the FTC staff did not make a distinction, we still see that distinction being made by various entities. So the question is, is it naive to think that anything is actually truly anonymous? We see examples that are out there, for example, the AOL search

information that was published for research purposes. And information that was supposed to be anonymous was able to be -- they were able to re-identify someone based on the very specific searches that they had made. So the question here is can we really consider information anonymous, or is there such a high chance that it could be de-anonymized or re-identified that we should be making no distinction.

>> Male Speaker: Everything the industry says, and we have supplied so much information to the FTC about this, and it's in the record, and it's given to the top staff. Everything the industry says daily, it is about an individual. Yes, we don't collect PII, but they can target individual. The self-regulatory regime adopted by the trade organizations and the new PR campaign that was just launched last week should be investigated and rejected by the Federal Trade Commission. Because they're not telling consumers the truth. We're not collecting personal information, they tell you, they tell the consumers, but to their clients, like Microsoft did in the document that I read, it's an individual. They know you. The whole system is designed to know you, to find you, to engage you, to develop a relationship and collect more information. And that's why I am glad finally that the FTC hasn't started a serious investigation of the online advertising industry, collecting documentation, so it can come up to speed because, as Leslie Harris said this morning, the commission needs to know more about the online ad space and protect the privacy. Thanks.

>> Female Speaker: I think it's important to go back to what it is we're talking about. We're talking about ads, we're talking about ads that are targeted. There was a lot of talk this morning about -- and a little bit on this panel, as well, about problems that result from ads. And there was talk about redlining. Redlining is illegal. Redlining is proscribed by DMA guidelines and every other industry group of guidelines that I'm familiar with. We can keep bringing out the parade of possible horrors, but none of those things have actually happened. We're talking about ads. And it's hard, I think, it's hard to be upset about ads that could possibly be relevant to you and improve your online experience. On the issue of PII, non-PII, I again, don't know of companies that are collecting PII and telling consumers that they're not collecting PII. And I think it's very, very important to let the marketplace work in the way that BlueKai does. Transparency is absolutely paramount, and let consumers make their choices. We have tried very hard to do this, as I said with DMA choice, which is a mail preference service. It enables consumers to go online and figure out

what they want, how they want it, whether they want it, mail, several times a year. And when you get into the granularity of individual consumers making individual decisions about themselves is when you can best meet consumers' needs.

>> Peder Magee: I think the transparency is a key component here. On the question of PII versus non-PII, I think that's tough, and I think it depends on the definition you're using.

>> Female Speaker: Everybody wave your hands.

>> Peder Magee: I want to give final weigh-in on Craig Wills if you want to talk more about the PII, non-PII distinction based on your research.

>> Craig Wills: One of more recent things observed is certainly the third parties are also involved in social networking sites. We put out a paper not long ago that basically showed your social networking identifier gets passed to the same companies. So not only your behavior is being linked to your identity in that way.

>> Michelle Rosenthal: And we do hope to get in to some of those issues in our second round table as well.

>> Female Speaker: Just something really short, I just don't want to let stand the statement that it's just advertising, it doesn't lead to anything bad. We have given examples, yes, redlining is illegal, but it's happening. So bad things are happening because of the advertising targeting, and we need to look into it. If they weren't, we wouldn't be here.

>> Peder Magee: Thank you very much, and thanks to all the panelists for your time and your energy.

>> Michelle Rosenthal: We have a ten minute break. Please try to be back in the room in ten minutes.