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1 {York Stenographic Services, Inc.}  
2 HIF169.170  
3 JOINT HEARING ON BEHAVIORAL ADVERTISING: INDUSTRY PRACTICES  
4 AND CONSUMERS' EXPECTATIONS  
5 THURSDAY, JUNE 18, 2009  
6 House of Representatives,  
7 Subcommittee on Commerce, Trade, and Consumer Protection  
8 joint with the  
9 Subcommittee on Communications, Technology and the Internet  
10 Committee on Energy and Commerce  
11 Washington, D.C.

12 The subcommittees met, pursuant to call, at 10:08 a.m.,  
13 in Room 2123 of the Rayburn House Office Building, Hon. Bobby  
14 L. Rush [chairman of the Subcommittee on Commerce, Trade, and  
15 Consumer Protection] presiding.

16 Present from Subcommittee on Commerce, Trade, and  
17 Consumer Protection: Representatives Rush, Weiner, Matsui,  
18 Space, Radanovich, Stearns, Whitfield, Pitts, Terry, Gingrey,

19 Scalise, and Barton {ex officio.)

20 Present from Subcommittee on Communications, Technology  
21 and the Internet: Representatives Boucher, Barrow, Welch,  
22 Inslee, Upton, and Buyer.

23 Staff present: Amy Levine, Subcommittee Counsel; Jen  
24 Berenholz, Deputy Clerk; Timothy Robinson, Subcommittee  
25 Counsel; Michele Ash, Chief Counsel; Greg Guice, Subcommittee  
26 Counsel; Pat Delgado, Chief of Staff (Waxman); Will Cusey,  
27 Special Assistant; Sarah Fisher, Special Assistant; Anna  
28 Laiton, Counsel; and Roger Sherman, Chief Counsel.

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29           Mr. {Rush.} Today is a joint hearing of the  
30 Subcommittees on Commerce, Trade, and Consumer Protection,  
31 and Communications, Technology and the Internet. And I want  
32 to welcome all of you to this hearing. And I want to just  
33 give you some advance notice that in about 20 minutes, we  
34 will be called to the floor for a series of votes. Some have  
35 estimated to be--we are scheduled for about 27 votes on the  
36 floor, which is certainly going to extend the hearing, and so  
37 we ask that you be patient with us. We will try to conduct  
38 this hearing and try to be very mindful of your time, but our  
39 actions will be dictated by the House schedule and by the  
40 votes on the floor. Now I want to recognize myself for 5  
41 minutes of opening statement. As I indicated, today, the two  
42 subcommittees, Commerce, Trade and Consumer Protection and  
43 Communications, Technology and the Internet are combining our  
44 commitment to privacy and our resources to conduct an  
45 extremely important hearing on Behavioral Advertising:  
46 Industry Practices and Consumers' Expectations.

47           And I just want to take a moment to thank Chairman  
48 Boucher for not only his cooperation and working together and  
49 teaming up on this particular issue, but I want to thank him  
50 also for his past championship and dedication to this very,  
51 very important issue. This is but one hearing along a

52 continuum of legislative activity examining the domains of  
53 online and off-line consumer privacy and how companies handle  
54 and treat consumers' personal information. Most recently,  
55 the Subcommittee on Commerce, Trade and Consumer Protection,  
56 which I chair, marked up H.R. 2221, the Data Accountability  
57 and Trust Act, a bi-partisan bill, which addresses the  
58 security of personal information, breaches of that security,  
59 and corrects some of the resulting harms to consumers. I am  
60 hopeful that there will be more hearings.

61       There are currently no federal laws specifically  
62 governing behavioral advertising nor do we have a  
63 comprehensive general privacy law. As members of Congress,  
64 we have anticipated for some time that this hearing would be  
65 highly informative and very valuable in helping us answer the  
66 question that everyone seems to ask, is federal privacy  
67 legislation necessary, or should companies be trusted to  
68 discipline and regulate themselves? At this hearing, I look  
69 forward to hearing from our very distinguished panel of  
70 witnesses about this growing trend of online behavioral  
71 advertising. Market research firms have estimated that  
72 behaviorally targeted ad spending will reach \$4.4 billion by  
73 the end of 2012. That number is eye-opening as it translates  
74 into almost 25 percent of all the online display ad spending  
75 that is projected to be spent by year-end 2012.

76           As prevalent as these ads are becoming so, too, are the  
77 buzz road, which are purportedly needed to flush out the  
78 appropriate contents of fair information principles and  
79 practices. Words and phrases such as transparency, choice,  
80 notice, consent, consumer expectations, opt-in and opt-out  
81 seemingly mean different things to different speakers  
82 depending upon an array of variables. Such variables may  
83 include the identity of the user, whether he or she has  
84 registered with the visited website, whether the ads are  
85 being served by first or third party sites, the sufficiency  
86 and conspicuousness of pre-existing privacy policies and  
87 disclosures, the robustness of user-enabled settings for  
88 managing user privacy, and the list goes on and on and on and  
89 on.

90           All of these variables are important to consider, but  
91 they can muddle the issue of whether legislation is needed.  
92 I will be listening intently to your accounts of how up front  
93 companies have been about the types of personal information  
94 that they are collecting from consumers, what they are doing  
95 with the information, and what choices and controls that  
96 consumers have over the subsequent use of that information.  
97 I want to thank all the witnesses for coming in this morning  
98 for sharing with us, taking away from your busy schedule to  
99 provide input, much-needed input, into these matters that are

100 before us today. And I want to thank all the subcommittee  
101 members and the staff for so diligently preparing us on this  
102 subcommittee for these hearings. And now I want to recognize  
103 for 5 minutes for the purposes of opening statement the  
104 ranking member, Mr. Radanovich. Mr. Radanovich is recognized  
105 for 5 minutes for opening statement.

106 [The prepared statement of Mr. Rush follows:]

107 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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108           Mr. {Radanovich.} Thank you, Mr. Chairman, and I want  
109 to thank you and Chairman Boucher and my fellow ranking  
110 member, Mr. Upton, on these hearings today. I think it is a  
111 good issue that we need to be talking about. Privacy  
112 continues to be an issue of increasing concern to consumers,  
113 and I am pleased that we will be looking at all the relevant  
114 issues to determine what the problems are and what possible  
115 solutions exist. What was once thought to be an issue  
116 limited to business with whom consumers had a customer  
117 relationship has been forever altered by the Internet.  
118 Progression and innovation in computer and digital technology  
119 over the last 20 years has transformed many aspects of our  
120 lives, and by the same token that progress has opened the  
121 possibility to potential abuses and invasions into our lives.

122           In the connected world of the Internet where data is  
123 instantaneously accessible to anybody in the world, we have  
124 learned how vast amounts of sensitive consumer data can be  
125 inadvertently disclosed or subject to more malicious and  
126 intentional theft. We also know the main reason consumers  
127 should be concerned about the amount of personal information  
128 out there on the worldwide web is that sensitive personal  
129 information can be used for harmful purposes, particularly  
130 identity theft. Thankfully, we are addressing some of those

131 concerns with the data security and breach notification  
132 legislation moving through the committee right now. Our  
133 oversight into the data security issue opened our eyes to the  
134 types of sensitive personal information many institutions  
135 ranging from businesses to government maintain about us.

136 While information is kept about us may be for legitimate  
137 reasons that mandate data retention, for instance, for law  
138 enforcement purposes most consumers do not fully understand  
139 how information gathered about us will be used or with whom  
140 it will be shared. These concerns are legitimate. What is  
141 more, these concerns over keeping personal information  
142 private are exacerbated by digital technology and the  
143 capabilities of Internet technology. Information that filled  
144 rooms of file cabinets in a paper-based business can now be  
145 stored in devices that attach to a key ring and can be sent  
146 over the Internet in seconds making information theft easy  
147 and often untraceable. The ability to instantaneously  
148 collect, analyze, and store consumers' online behavior for  
149 marketing purposes stretches this dynamic even further.

150 The Internet quickly evolved beyond its original purpose  
151 as a communication tool to become a means of commerce,  
152 education, and social interaction. A generation has been  
153 raised on the Internet with the ability to find information  
154 relevant to their interests and communicate in ways that we

155 could not imagine only 10 years ago, and most expect these  
156 services to be customized for their preferences. But many of  
157 these technologies and practices that deliver high levels of  
158 customization present new challenges and concerns for  
159 consumers, primarily understanding what the trade-off is for  
160 these services. Do we need to relinquish personal  
161 information about ourselves and our Internet for the purposes  
162 of generating more user-specific advertisements in exchange  
163 for access to the information we seek on the Internet, and,  
164 if so, who has our access to this information?

165         The Internet has been a successful tool for commerce and  
166 has benefitted consumers with convenience, choice, and  
167 savings. Relevant advertisements based upon user interests  
168 will be more beneficial to the consumer and business, which  
169 in concept is no different than the manner in which marketing  
170 research determines which advertisements are selected to be  
171 placed in magazines, newspapers or on television based on the  
172 intended audience. However, in practice the Internet is  
173 different because of its ability to track preferences on a  
174 minute by minute basis. The question is how advertisers  
175 engage in the process of identifying their potential target  
176 audience. Specifically, what information is used to generate  
177 targeted advertisements? I have a son who I would do  
178 anything to protect, and although I cannot monitor him every

179 waking moment and prohibit his ability to access the  
180 Internet, nor would I want to, like any parent I want to  
181 trust that he will be safe to surf online and interact with  
182 his friends without being unknowingly monitored or profiled.

183         While my son is in a vulnerable demographic millions of  
184 Americans of all ages spend time surfing, posting, and  
185 shopping on the Internet. How their information is used and  
186 what control the individual has over the collection of their  
187 information is at the center of the debate of whether we need  
188 a federal privacy law, and, if so, how it should be  
189 structured and what activities it will address. In the case  
190 of my son, I am concerned with the information being gathered  
191 and how it is used. I am less concerned with who is  
192 conducting the behavioral profiling or what technology they  
193 are using. I thank the witnesses today, and I look forward  
194 to your testimony, particularly hearing more about what the  
195 industry is doing to address many of these concerns in and of  
196 itself. Mr. Chairman, I am ready to work with you and the  
197 stakeholders to address identified problems and ensure  
198 whatever solutions develop will equally apply to the behavior  
199 regardless of who engages in it. Thank you, Mr. Chairman.

200             [The prepared statement of Mr. Radanovich follows:]

201         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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202           Mr. {Rush.} The chair thanks the gentleman. It is now  
203 my privilege and honor to recognize for 5 minutes for the  
204 purposes of opening statement the chairman of the  
205 Subcommittee on Communications, Technology, and the Internet,  
206 the gentleman from West Virginia, Chairman Boucher, for 5  
207 minutes.

208           Mr. {Boucher.} Well, thank you very much, Chairman  
209 Rush, and I want to begin this morning by saying thank you to  
210 you and to your very fine staff and to Mr. Radanovich from  
211 California, your ranking member, as well to Mr. Stearns and  
212 his staff for the excellent cooperation we have had among  
213 ourselves as the plans for this joint hearing of our two  
214 subcommittees have progressed. I very much look forward to  
215 our continued collaboration as we consider the need for  
216 legislation and discuss the principles that privacy  
217 protection legislation should embody. Broadband networks are  
218 a primary driver of the national economy and it is  
219 fundamentally in the nation's interest to encourage their  
220 expanded use.

221           One clear way Congress can promote greater use of the  
222 Internet for access to information, for electronic commerce,  
223 and for entertainment is to assure that Internet users have a  
224 high degree of privacy protection, including transparency

225 about information collection practices and uses, and control  
226 over the use of the information that is collected from those  
227 who use the Internet. I have previously announced my desire  
228 to work with Chairman Waxman, Chairman Rush, and ranking  
229 members Barton, Stearns, and Radanovich in order to develop  
230 legislation this year extending to Internet users the  
231 assurance that their online experience will be more secure.  
232 Such a measure would be a driver of greater levels of  
233 Internet uses, such as electronic commerce, not a hindrance  
234 to them.

235 Today's discussion will examine behavioral advertising  
236 and ways to enhance consumer protection in association with  
237 it. I am a supporter and a beneficiary of targeted  
238 advertising. I would much prefer to receive Internet  
239 advertisements that are truly relevant to my particular  
240 interests. In fact, I have bought a significant number of  
241 items based upon targeted advertising delivered to me from  
242 web sites that I frequently visit. And so I have a deep  
243 appreciation of the value of targeted advertising from the  
244 consumer perspective. It is important to note also that  
245 online advertising supports much of the commercial content  
246 applications and services that are available to Internet  
247 users without charge, and I have no intention of doing  
248 anything that would disrupt that very successful, in fact,

249 essential business model for Internet-based companies.

250         At the same time, I think consumers are entitled to some  
251 base line protections in the online space. Consumers should  
252 be given clear, concise information in an easy defined  
253 privacy policy about what information a web site collects  
254 about them, how that information is used, how long it is  
255 stored, how it is stored, what happens to it when it is no  
256 longer stored, and whether it is ever given or sold to third  
257 parties. Consumers should be able to opt out of first party  
258 use of the information and for its use by third parties or  
259 subsidiaries who are a part of the company's normal first  
260 party transactions or without whom the company could not  
261 provide its service. All that would fall within the ambit of  
262 opt out. Consumers should be able to opt in to use of their  
263 information by third parties for those parties' own marketing  
264 purposes.

265         This arrangement should not prove to be burdensome. In  
266 fact, it is very much in line with the practices of many, if  
267 not most, of the reputable service providers today. I look  
268 forward to hearing from your witnesses about their reactions  
269 to this arrangement and how it can best balance Internet  
270 business models that depend on online advertising with  
271 adequate protection for consumers' privacy. For example,  
272 have I suggested a workable online opt in and opt out consent

273 arrangement or are there additional situations in which opt  
274 out consent might sometimes be appropriate? What safeguards  
275 should be in place in order to ensure that consumers are  
276 giving meaningful consent to the sharing of their information  
277 both on and off the Internet? What role could self-  
278 regulatory organizations play in a statutory arrangement that  
279 ensures that all entities that collect information about  
280 Internet users abide by a basic set of consumer privacy  
281 standards.

282 I also look forward to learning about emerging  
283 approaches to enhancing consumer choice and controlled over  
284 the use of information through efforts like the network  
285 advertising initiative and persistent opt out cookies. What  
286 benefits could these services offer to consumers? What is  
287 the best way to inform consumers about the availability of  
288 these services and again how should the consumers' meaningful  
289 consent be procured? I am also interested in hearing a  
290 purview of what the future of behavioral advertising may hold  
291 and what services it might enable and how to accommodate  
292 privacy concerns associated with those future services. I  
293 want to thank our witnesses for taking the time to join us  
294 here today. They represent a broad and diverse range of  
295 interest and are all deeply knowledgeable about these  
296 subjects. We very much look forward to hearing your

297 testimony. Thank you, Mr. Chairman.

298 [The prepared statement of Mr. Boucher follows:]

299 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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300           Mr. {Rush.} The chair thanks the gentleman. The chair  
301 now recognizes the ranking member of the Subcommittee on  
302 Communications, the ranking member, Mr. Stearns, from  
303 Florida. He is recognized for 5 minutes for the purposes of  
304 opening statement.

305           Mr. {Stearns.} Good morning, and, thank you, Mr.  
306 Chairman. I also want to echo Mr. Boucher's comment that we  
307 look forward to working together in a bipartisan fashion on a  
308 very important bill, and I want to thank the witnesses for  
309 coming this morning. I think for the most part you are going  
310 to educate us. You are the experts here, and we respect your  
311 opinions. We want to do no harm here. So I think when you  
312 look at the possibility of federal legislation dealing with  
313 privacy, we want to make sure that it is consumer centric.  
314 Consumers don't care if you are a search engine or a  
315 broadband provider. They just want the assurance that their  
316 privacy is protected. We must empower them to make these  
317 privacy decisions themselves. They feel, they know how much  
318 ought to be collected and what should not be collected.  
319 Congress cannot and should not make that decision for them,  
320 but it can play a role in making sure consumers have the  
321 information simply to make their own choices.

322           That means companies should be as transparent as

323 possible about what information they collect, and, of course,  
324 how they are using it. That way consumers will be better  
325 able to make informed privacy decisions. This transparency  
326 should include robust disclosure and notice outside the  
327 privacy policy. Notice and disclosure needs to be clear and  
328 conspicuous so the consumers know that. First, some  
329 information is being collected. Second, what is the  
330 information that is being collected? How is it being used?  
331 And, third, how to prevent this information being collected  
332 if they so desire. By giving the consumer more robust and  
333 transparent information, we can strike the proper balance  
334 between privacy protection and strong Internet commerce.

335       Furthermore, my colleagues, I want to emphasize two  
336 principles that should play a prominent role in our  
337 examination of this issue. First, we should apply the same  
338 privacy standard to companies that are engaged in similar  
339 conduct with similar information, but we should avoid  
340 applying those same standards to entities that do not use the  
341 same types of information for the same purposes and do not  
342 have anywhere near the same volume of information about the  
343 perspective consumer. For example, search engines in the  
344 Internet advertising networks may use a consumer's visit to a  
345 particular web site to create profiles not directly related  
346 to the reason for the visit. Other entities, like web

347 publishers, collect information only to provide the very  
348 service the consumer has come for. Our approach should  
349 recognize that.

350         Second, any legislation in this area should hold various  
351 parties accountable only for that which they know and  
352 control. We should be wary of efforts to make any one party  
353 responsible for the actions of others. Consumers' online  
354 activities provide advertisers with valuable information upon  
355 which to market their products and their services.  
356 Collecting this type of information for targeted advertising  
357 is very important because it simply allows many of these  
358 products and services to remain free to consumers. Without  
359 this information, web sites would either have to cut back on  
360 their free information and services or would have to start  
361 charging a fee. Neither result is good for the consumers.  
362 Overreaching privacy regulation could have a significant  
363 economic negative impact at a time when many businesses in  
364 our economy are struggling, so let us be very careful on  
365 these issues before we leap to legislative regulatory  
366 proposals.

367         When I was chairman of the Commerce, Consumer  
368 Protection, and Trade, I held a number of hearings on  
369 privacies. I worked with Chairman Boucher, and we developed  
370 a consumer privacy protection at which we dropped as a bill.

371 This bill would have required data collectors to provide  
372 consumers with information on the entity collecting the  
373 information and the purposes for which the information was  
374 being collected. I believe it was, and still is, a good base  
375 bill to use as we move forward to develop a new privacy bill.  
376 Also, I would like to bring up an issue perhaps that many of  
377 us have thought about, and I don't want to bog down our  
378 discussion about it. Which agency will regulate and enforce  
379 privacy standards? Will it be the FCC or the Federal Trade  
380 Commission, a combination or possibly a new agency? I know  
381 this issue won't be solved this morning, but it is something  
382 we are going to have to work out and work through, and I look  
383 forward to doing this in a bipartisan fashion.

384         And I would be interested, if possible, if some of the  
385 witnesses could give us their feelings about how the  
386 jurisdiction of this privacy bill would be best supervised  
387 with. So, Mr. Chairman, I would conclude by pointing out we  
388 have talked a little bit at previous hearings about deep  
389 pocket inspection. The point is that whether a company uses  
390 deep pocket inspection or reads your e-mail directly, this  
391 should be part of the privacy rules in some way. So I think  
392 our witnesses can also help us on that particular aspect, so  
393 I look forward to hearing and thank you for the opportunity  
394 to speak.

395 [The prepared statement of Mr. Stearns follows:]

396 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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397           Mr. {Rush.} The chair thanks the gentleman. The chair  
398 now recognizes the gentleman from Ohio, Mr. Space, for 2  
399 minutes for the purposes of opening statement.

400           Mr. {Space.} Thank you, Chairman Rush and Chairman  
401 Boucher, Ranking Member Radanovich and Ranking Member Stearns  
402 for convening us today on the topic of behavioral  
403 advertising. I was struck when reviewing Professor Felten's  
404 testimony by a comment that he makes, ``Responsible ad  
405 services typically collect less information and track users  
406 less intensively than the technology would allow.'' To me,  
407 this means that just because we can doesn't mean that we  
408 should. I certainly understand the need for companies to  
409 advertise on their sites. Doing so is what enables our  
410 constituents to access free content, products, and services  
411 on line. They also understand the desire of ad companies to  
412 supply consumers with ads that are of more relevance to them.  
413 This is a better business model for the companies and  
414 potentially a service to consumers.

415           However, I want to make clear that one bad apple could  
416 spoil the whole bunch here. The moment online consumers  
417 believe their personal information is at risk of corruption,  
418 misuse or theft will be the moment this approach we are  
419 discussing today will cease to work. I strongly believe it

420 is in the interest of all parties to disclose to consumers  
421 their advertising practices and intent and to ensure that  
422 consumers' personal information is strictly guarded against  
423 security breaches and exploitation. I look forward to these  
424 conversations today and to working with my colleagues on this  
425 issue as we move forward. I yield back my time.

426 [The prepared statement of Mr. Space follows:]

427 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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428           Mr. {Rush.} The chair thanks the gentleman. It is now  
429 my pleasure and honor to recognize for 5 minutes for the  
430 purposes of opening statement the ranking member of the full  
431 Committee on Energy and Commerce, Mr. Barton, is recognized  
432 for 5 minutes.

433           Mr. {Barton.} Thank you, Mr. Chairman. As I look on  
434 the other side of the aisle, I am glad to see that none of  
435 the Democrats who played on the Democratic baseball team are  
436 actually in the room, so I can congratulate them in their  
437 absence and I won't have to do it face to face when I see  
438 them on the floor. But last night Mike Doyle, who is the  
439 manager of the team, Bart Stupak, who is on this committee,  
440 played an amazing game. It wasn't their usual Democratic  
441 bumbling error game. They actually played very well as a  
442 team, and as a result they beat the stalwart Republicans 15-  
443 10. John Shimkus, who is our starting pitcher, played an  
444 excellent game, and we had a number of Energy and Commerce  
445 Republicans, Mr. Gingrey, Dr. Gingrey, who is here, walked at  
446 a key time and later scored.

447           Mr. Scalise, who is here, played second base some and  
448 also did some base running and scored. Mr. Pitts, who came  
449 out and watched the game, and luckily didn't try to play  
450 although we could have used his bombing skills from the

451 Vietnam War. So, anyway, we raised quite a bit of money for  
452 charity and had a good time. When you all see Mike Doyle and  
453 you see that he is grinning from ear to ear just congratulate  
454 him and tell him to take pity on the downtrodden Republicans  
455 who didn't quite have the stuff last night.

456 On this hearing, Mr. Chairman, I do want to thank you,  
457 thank Mr. Boucher, Mr. Stearns, Mr. Radanovich for working in  
458 a bipartisan fashion to protect the privacy and security of  
459 every American's personal information. I am glad that we are  
460 working on this in a bipartisan way. I especially appreciate  
461 Chairman Rush's agreement to act on the Republicans' data  
462 security bill. That bill has implications for the broader  
463 privacy discussion, and I hope that that bill will move  
464 forward in the full committee. Along with Congressman  
465 Markey, I co-chair the Congressional Privacy Caucus, so I am  
466 glad that we are working on these issues in a bipartisan way.  
467 I, myself, every few days hit the delete button and clean out  
468 all the various cookies on the computer and at my home. It  
469 is amazing to me how many of those accumulate and most of the  
470 time without absolutely any knowledge of myself or anybody  
471 else for that matter that they are being put on our computer.  
472 I think it is a big deal if somebody tracks where you go  
473 and what you look at without your personal approval. We  
474 wouldn't like that in the non-Internet world, and I

475 personally don't like it in the Internet world. The  
476 information about myself is mine. Unless I choose to share  
477 it, I would just as soon that it stay my information only. I  
478 think that I have the right to know what information people  
479 are gathering about me and the right to know what they are  
480 doing with it. It is obvious that the public agrees with the  
481 statement that I just made because poll after poll shows that  
482 they think that their information and their right to privacy  
483 is just as important on the Internet as it is in the non-  
484 Internet world. When I open an e-mail for the new Dallas  
485 Cowboy Stadium that is in my congressional district, I don't  
486 expect to begin receiving unsolicited ads for airlines  
487 tickets to the Dallas-Fort Worth area or hotels, also in my  
488 district in Arlington, Texas.

489       It is obvious that people track what I do and where I  
490 go, and try to take advantage of that. Fortunately,  
491 technology has come quite a ways in protecting the  
492 individuals. We started looking at the spyware problem back  
493 in the 107<sup>th</sup> Congress, and thanks to the work among others  
494 Congresswoman Mary Bono Mack, Ed Towns, Chairman Dingell,  
495 those spyware infections are not near the problems that they  
496 used to be. However, today companies continue to gather,  
497 maintain, and use data through a variety of technological  
498 methods. Some of those companies such as Verizon and Comcast

499 are large companies. They are regulated in some parts of  
500 their business model, and I think they are trying to act  
501 appropriately. There are other companies, so-called ISP  
502 locators, that I personally don't even know their name. Then  
503 you have the in-between companies, the so-called edge  
504 companies like Yahoo! and Google. Put together, it still is  
505 a little bit of a wild west out there, and I think it is time  
506 that Congress begin to look at and try to bring some law and  
507 order to that particular wild west area.

508 I see that my time has expired, Mr. Chairman, so I will  
509 submit the rest of the statement for the record. Suffice it  
510 to say that I am glad that you and Congressman Boucher are  
511 working with the Republicans and taking a serious look at  
512 this. I also want to commend the private sector that is here  
513 today. It is my understanding that you are working together  
514 to come up with some voluntary rules, and it is always  
515 preferable in my opinion to do it through a voluntary market-  
516 based approach as opposed to a mandatory regulatory approach.  
517 So in any event again thank you, Mr. Chairman, and once again  
518 congratulations to the Democrats for winning the baseball  
519 game last night. I yield back.

520 [The prepared statement of Mr. Barton follows:]

521 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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522           Mr. {Rush.} The chair thanks the ranking member. It is  
523 now my honor to recognize the gentle lady from California for  
524 2 minutes for the purpose of opening statement, Ms. Matsui.

525           Ms. {Matsui.} Thank you, Mr. Chairman. I want to thank  
526 you and Chairman Rush for calling today's joint hearing and  
527 applaud both your leadership in addressing this important  
528 issue. I would also like to thank our panelists for being  
529 here with us this morning. Today, we are here to examine the  
530 practices and consumer protections from a growing online  
531 advertisement practice known as behavioral advertising. As  
532 broadband access continues to expand across the country, more  
533 and more Americans rely on the Internet for news information,  
534 online videos, and to purchase goods and services. Americans  
535 need to have trust and confidence that their personal  
536 information are properly protected. Privacy policies and  
537 disclosures should be clear and transparent so consumers can  
538 choose what information they want to view and receive on the  
539 Internet instead of inappropriate collection and misuse of  
540 their information.

541           Consumers should also understand the scope of the  
542 information that is being collected, what it is being used  
543 for, the length of time it is being retained, and its  
544 security. The more information that consumers have, the

545 better. Moving forward, we must assure that Americans are  
546 comfortable with using the Internet and know with confidence  
547 that meaningful privacy safeguards are in place or ensuring  
548 that we don't stifle innovation. I thank both of you, Mr.  
549 Chairman, for holding this important hearing today, and I  
550 yield back the balance of my time.

551 [The prepared statement of Ms. Matsui follows:]

552 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
553           Mr. {Rush.} The chair thanks the gentle lady. Now the  
554 chair recognizes the gentleman from Kentucky, Mr. Whitfield,  
555 for 5 minutes for the purpose of opening--let me correct  
556 that. The chair recognizes the gentleman from Michigan.

557           Mr. {Upton.} I thank my friend, and I will not take my  
558 2 minutes. We have great attendance. We will see what the  
559 attendance is after lunch when we return after these votes.  
560 I would like to associate myself with Mr. Barton's remarks.  
561 The information is yours. When you make a phone call, no  
562 matter who it is, you don't expect AT&T or Verizon to share  
563 the information with somebody else. You can imagine if you  
564 ordered a pizza on the phone and all of a sudden you get  
565 different pizza companies coming in knowing that you are  
566 going to be subscribing to that. That information is  
567 personal. It shouldn't be shared unless that individual  
568 allows and knows that it is going to be shared. It needs to  
569 be protected. It is nobody's business. You don't expect to  
570 have someone follow you in your car when you go make an  
571 errand whether it be to a dry cleaner or wherever you might  
572 go and expect some competitor then to perhaps get the  
573 information to trace you back. So this is a great hearing,  
574 and I look forward to it and I yield back the balance of my  
575 time.

576 [The prepared statement of Mr. Upton follows:]

577 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
578           Mr. {Rush.} The chair thanks the gentleman. The chair  
579 now recognizes the gentleman from Georgia, Mr. Barrow, for 2  
580 minutes for the purpose of opening statement.

581           Mr. {Barrow.} I thank the chairman. I am going to  
582 waive opening but I want to thank the ranking member for his  
583 kind words of congratulations. In solidarity with Mr. Pitts,  
584 I want to remind the ranking member that those of us who sit  
585 in the stands and cheer also serve. Thank you very much.

586           [The prepared statement of Mr. Barrow follows:]

587 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
588           Mr. {Rush.} The chair now recognizes the gentleman from  
589 Kentucky, Mr. Whitfield, for 5 minutes.

590           Mr. {Whitfield.} Thank you, Mr. Chairman. We certainly  
591 appreciate all these witnesses being here today as we explore  
592 this very important subject. As online communities use an  
593 array of sophisticated and ever evolving data collection and  
594 profiling applications, it is important that we focus on  
595 protecting privacy. Today, I think we will be hearing about  
596 privacy policies at various companies, the data retention  
597 that they do, and as we proceed and think about legislation,  
598 it is imperative that we use a balanced approach and proceed  
599 with caution. And I think if we do have any legislation it  
600 certainly should apply equally to all entities throughout the  
601 Internet ecosystem, and I will yield back the balance of my  
602 time.

603           [The prepared statement of Mr. Whitfield follows:]

604 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
605           Mr. {Rush.} The chair now recognizes the gentleman from  
606 Ohio, Mr. Pitts from Pennsylvania, Mr. Pitts, recognized for  
607 2 minutes.

608           Mr. {Pitts.} Thank you, Mr. Chairman. I worked real  
609 hard on an opening statement, but I think I will submit it  
610 for the record. Just let me say I believe that consumer  
611 privacy rights should be carefully guarded. I am also  
612 encouraged by private industry's recent steps to further  
613 protect consumers. It is my hope that if legislative action  
614 is taken that we will do so in a careful manner striking a  
615 delicate balance between the necessary steps we must take to  
616 protect consumers, and the ability for industry to continue  
617 to be successful. So with that, I will submit the rest for  
618 the record and yield back.

619           [The prepared statement of Mr. Pitts follows:]

620 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
621           Mr. {Rush.} The chair thanks the gentleman. The chair  
622 now recognizes the gentleman from Georgia, Dr. Gingrey, for 2  
623 minutes for the purpose of opening statement.

624           Mr. {Gingrey.} Chairman Rush and Chairman Boucher,  
625 Ranking Member Radanovich and Stearns, I want to thank you  
626 for calling this hearing today on the emerging use of  
627 behavioral or interest-based advertising online. This type  
628 of advertising only represents a small portion of all online  
629 ads. By 2012 this type of advertising is estimated to reach  
630 \$4.4 billion in revenue. Therefore, it is important for  
631 these subcommittees to take a further look at this industry  
632 in order that we ensure the online privacy of consumers.  
633 When hearing testimony from this panel today, I believe that  
634 it will be important that we focus on three components of any  
635 potential regulation that these subcommittees propose.  
636 First, it is important to distinguish what it is that we are  
637 going to be regulating.

638           Currently, most interest-based advertising is conducted  
639 through the use of web browser cookies. These encoded text  
640 files help indicate a user's online activity, thereby  
641 enabling advertisers to customize ads based on a series of  
642 preferences. However, as we have seen in the IT industry,  
643 particularly over this last decade, technology moves very

644 quickly and if we are to propose regulations for this  
645 industry then we must make the determination of exactly how  
646 and what we are going to regulate.

647         Mr. Chairman, we must also examine which federal agency  
648 would be best suited to coordinate any potential regulation.  
649 Both the Federal Communications Commission, FCC, and the  
650 Federal Trade Commission have jurisdiction over elements of  
651 behavioral advertising. Therefore, for the sake of consumers  
652 if regulations are necessary, we must coordinate the efforts  
653 and responsibilities of these two governmental entities,  
654 thereby allowing for industry growth while at the same time  
655 safeguarding an individual's private information. Lastly,  
656 Mr. Chairman, we would also have to determine whom we would e  
657 regulating. Would it be the Internet service provider or the  
658 advertisers or the web interfacing companies represented here  
659 today?

660         Accordingly, I think it will be important that as we  
661 move forward, we diligently take the time to hear from ISP  
662 companies and advertisers as a way to give us different  
663 perspective on this important issue that will continue to be  
664 crucial to the further development of online activity. Mr.  
665 Chairman, the heart of this hearing is the American consumer  
666 so our focus must be their overall protection. I look  
667 forward to hearing from the panel, and I yield back the

668 balance of my time.

669 [The prepared statement of Mr. Gingrey follows:]

670 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
671           Mr. {Rush.} The chair thanks the gentleman. The chair  
672 now recognizes the gentleman from Louisiana, Mr. Scalise, for  
673 2 minutes for the purposes of opening statements.

674           Mr. {Scalise.} Thank you, Mr. Chairman. I want to  
675 thank you and the ranking members of the subcommittees for  
676 having this hearing on behavioral advertising. I am pleased  
677 that both subcommittees are examining this issue as well as  
678 the greater issue of data privacy. I know that Congress and  
679 this committee have held hearings on data privacy in the  
680 past, but as we know technology continues to advance and  
681 develop in ways that provide tremendous benefits to  
682 consumers. But these advancements and benefits can expose  
683 consumers to certain risks. Therefore, we must continue to  
684 examine ways to ensure consumers don't have their personal  
685 information compromised. The technology industry is one of  
686 the most advanced and competitive industries in our country.  
687 It is also one of the most beneficial, both for consumers and  
688 for our economy.

689           We are able to share information, exchange ideas, and  
690 conduct commerce in ways that were never imagined just a few  
691 decades ago. The industry also provides millions of good  
692 high-paying jobs for people all across this country. One  
693 thing that I think must be pointed out is that the industry

694 has evolved and grown on its own with little regulation from  
695 the federal government. Some would say that the government's  
696 failure to regulate this industry is one of the reasons it  
697 has grown and provided so many good jobs. Yes, there have  
698 been bad actors in the industry, and there are issues we must  
699 address in protecting consumers' personal information, but I  
700 would hope we would proceed with caution when stepping in or  
701 when drafting legislation in this area. I hope the focus of  
702 today's hearing is how we can protect consumers and their  
703 personal information and what steps the industry will take to  
704 do that.

705 I hope today's hearing does not focus on how the  
706 government can improve the industry. As we continue to delve  
707 into this issue today and future hearings, we should focus on  
708 the consumer and what will offer consumers the greatest  
709 transparency into the online practices and give them  
710 meaningful control over their personal information. For this  
711 reason, I believe that self-regulation is sufficient and if  
712 privacy regulatory requirements are needed, they should be  
713 consistent across the industry and not be greater for one  
714 technology compared to another. Everyone involved in online  
715 advertising, ISPs, search engines, advertising networks, web  
716 site publishers and others, should all be subject to the same  
717 requirements, and Congress should not try to pick winners and

718 losers. After all, consumers are not always aware that their  
719 Internet activities are being tracked.

720       They care about what information is collected and what  
721 it is used for. They want to know if this is going on and,  
722 if so, they should be able to opt out if they so choose and  
723 be assured that a breach of their personal information will  
724 not occur. I look forward to the hearing and the comments  
725 from our panelists today, particularly on self-regulation and  
726 what changes they will make to ensure protection of personal  
727 information and what changes they plan on making moving  
728 forward. It is important that these committees and  
729 subcommittees understand their positions and activities as  
730 well as all the implications of these new advertising  
731 practices. Thank you, and I yield back.

732       [The prepared statement of Mr. Scalise follows:]

733       \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
734           Mr. {Rush.} The chair thanks the gentleman. As I  
735 indicated earlier, there is a vote occurring on the House  
736 floor. It is a series of votes, and so we will recess the  
737 committee until the completion of those votes, and we will  
738 reconvene 15 minutes after the completion of those votes.  
739 The committee now stands in recess.

740           [Recess.]

741           Mr. {Rush.} The committee will reconvene. I certainly  
742 want to thank each and every one of you for your patience. I  
743 want to also apologize for the time that you have been forced  
744 to spend here. This has been an abnormal day with a lot of  
745 abnormal activities, and I might add it has been a record-  
746 breaking day. According to some, we have had at least 54  
747 consecutive votes one after another and this never happened  
748 before that we know. So it is not something we are proud of,  
749 but it has been that kind of a day. We are going to proceed  
750 right to our witnesses.

751           Starting on my left, to the right we will proceed with  
752 introducing our witnesses. Mr. Jeffrey Chester is the  
753 Executive Director for the Center for Digital Democracy--let  
754 me start over again. Mr. Edward W. Felten is Professor of  
755 Computer Science at Princeton University. Next to Mr. Felten  
756 is Ms. Anne Toth. She is the vice president of Policy, Head

757 of Privacy for Yahoo. Ms. Nicole Wong is the Deputy General  
758 Counsel responsible for privacy for Google. Mr. Christopher  
759 R. Kelly is Chief Privacy Officer at Facebook. Mr. Jeffrey  
760 Chester is Executive Director for the Center for Digital  
761 Democracy. Mr. Charles D. Curran is the Executive Director  
762 of Network Advertising Initiative. And Mr. Scott Cleland is  
763 the President of Precursor LLC. Again, we want to thank the  
764 witnesses for their patience and for their appearance before  
765 the subcommittee. It is the practice of this subcommittee  
766 now that we will swear in all the witnesses, so would you  
767 please stand and raise your right hand?

768 [Witnesses sworn.]

769 Mr. {Rush.} Let the record reflect that all the  
770 witnesses have responded in the affirmative. Now we will ask  
771 the witnesses to enter into opening statements. And, Mr.  
772 Felten, you are recognized for 5 minutes or thereabouts. So  
773 please pull the mike in front of you, turn it on, and let it  
774 rip. Thank you.

|  
775 ^TESTIMONY OF EDWARD W. FELTEN, DIRECTOR, CENTER FOR  
776 INFORMATION TECHNOLOGY POLICY, PRINCETON UNIVERSITY; ANNE  
777 TOTH, VICE PRESIDENT OF POLICY, HEAD OF PRIVACY, YAHOO! INC.;  
778 NICOLE WANG, DEPUTY GENERAL COUNSEL, GOOGLE INC.; CHRISTOPHER  
779 M. KELLY, CHIEF PRIVACY OFFICER, FACEBOOK; JEFFREY CHESTER,  
780 EXECUTIVE DIRECTOR, CENTER FOR DIGITAL DEMOCRACY; CHARLES D.  
781 CURRAN, EXECUTIVE DIRECTOR, NETWORK ADVERTISING INITIATIVE;  
782 AND SCOTT CLELAND, PRESIDENT, PRECURSOR LLC

|  
783 ^TESTIMONY OF EDWARD W. FELTEN

784 } Mr. {Felten.} Thank you, Chairman Rush, Chairman  
785 Boucher, for the opportunity to testify today. My name is  
786 Edward Felten. I am a Professor of Computer Science and  
787 Public Affairs at Princeton University. I am here as a  
788 technologist. I am a computer science professor and I would  
789 like to explain some of the technology behind behavioral  
790 advertising. The most serious privacy concerns are raised  
791 not by the presence of advertising but by the gathering of  
792 information about users that can be used either to target ads  
793 or for other purposes. I would like to describe what  
794 technology makes possible. Responsible ad services do not do  
795 everything that is possible, and I don't mean to imply

796 otherwise. Others on the panel can describe what their own  
797 systems do do.

798         To explain what this technology allows, I would like to  
799 walk through a scenario illustrated by the diagram on the  
800 last page of my written testimony. And if I could have the  
801 display, please, of the Power Point. What I would like to  
802 describe, Mr. Chairman, is a scenario involving behavioral  
803 advertising. In the beginning of the scenario, I go to a  
804 weather site, and I look up Thursday's forecast for  
805 Washington. The weather site sends me a page with the  
806 forecast information and a hole where the ad should be. And  
807 along with that page it sends my computer a command telling  
808 it how to find the ad. Following these instructions, my web  
809 browser connects to an ad service shown here at the bottom  
810 and asks for an ad.

811         Along with this request, information is sent to the ad  
812 service about me, the fact that I am looking up Thursday's  
813 forecast for Washington and the fact that I normally look up  
814 the forecast in Princeton, New Jersey. The ad service  
815 remembers this information. The ad service sends an ad,  
816 which is inserted into the page. The service also sends an  
817 ad in this case related to travel to Washington because I  
818 looked up the Washington, D.C. forecast. The service also  
819 sends along its so-called cookie which contains a small,

820 unique code which in this example in the diagram is 7592,  
821 and my computer stores this cookie. Later, I visit a social  
822 network page which also contains an ad. Again, the page has  
823 a blank space for the ad and my computer contacts the ad  
824 service to get an ad.

825         My computer automatically sends along the cookie that  
826 the service provided earlier. This request for an ad carries  
827 more information about me. It says that I am interested in  
828 baseball and jazz, which the social network site knows, and  
829 that my name is Edward Felten. The ad service recognizes  
830 that the cookie is the same as before so it knows that I am  
831 the same person who looked up D.C. weather earlier and it  
832 adds the new information to its profile of me. The service  
833 sends back an ad. This time it is an ad for Washington  
834 Nationals tickets because I looked up Washington weather  
835 earlier, and I am interested in baseball.

836         Notice that the ad service is connecting the dots  
837 between things that I did on different sites between  
838 something I did on the weather site and something I did on  
839 the social network site. This allows it to better target ads  
840 and also to build up a more extensive profile about me.  
841 Next, I go to a book store and look up books about travel in  
842 Hawaii. The book store site sends this information to the ad  
843 service along with another ad request. Again, the cookie

844 allows the ad service to link together my book store  
845 activities with my earlier activities on other sites. The ad  
846 service sends back an ad for jazz CDs because it knows I like  
847 jazz because the social network site told it. By this point,  
848 the ad service knows enough to identify me. It knows I live  
849 in Princeton and it knows that my name is Edward Felten. The  
850 ad service buys access to a third party commercial database  
851 using what it knows about my identity to get more information  
852 about me.

853         In this example, the ad service gets my credit report in  
854 by insurance history, which it adds to my profile along with  
855 the other information it had. And, finally, I go to a news  
856 site that uses the same ad service. My computer again  
857 requests an ad. The ad service in this case sends an ad for  
858 budget Hawaiian vacations. It knows that I am interested in  
859 visiting Hawaii because I looked at Hawaii books at the  
860 bookstore, and it knows I am interested in a low cost trip  
861 because it has my credit report. The news site sends  
862 information about what I was reading. In this example, I was  
863 reading about cancer treatments. This information is added  
864 to my profile as well.

865         In this scenario, the ad service got information in  
866 three ways. First, content providers sent along information  
867 about what I was doing on their sites and what I had done in

868 the past. Second, the ad service connected the dots to link  
869 my activities across different sites at different times.  
870 And, third, the ad service accessed third party commercial  
871 databases. All of this information ended up in my profile.  
872 The result was well-targeted ads but also the creation of an  
873 electronic profile of me containing sensitive information  
874 which could in principle be resold or reused for other  
875 purposes. Now ad services are not the only parties who can  
876 assemble such profiles but large ad services do have a prime  
877 opportunity to build profiles due to their relationships with  
878 many content providers who can pass along information about  
879 users, and due to the ad service's ability to connect the  
880 dots by linking together a user's activities across different  
881 web sites.

882 All of this is possible as a technical matter which is  
883 not to say that responsible ad services do all of it or even  
884 most of it. Ad services may be restrained by law, by self-  
885 regulation or by market pressures. What is clear is the  
886 technology by itself cannot protect users from broad  
887 gathering and use of information.

888 Mr. {Rush.} Mr. Felten, I am embarrassed to say this,  
889 but would you please bring your statement to a close? You  
890 have extended your time.

891 Mr. {Felten.} Thank you, Mr. Chairman. I was just

892 wrapping up. I just wanted to thank the committee for  
893 holding this hearing and for giving me the opportunity to  
894 testify. Thank you.

895 [The prepared statement of Mr. Felten follows:]

896 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
897           Mr. {Rush.} Thank you so very much. Ms. Toth, you are  
898 recognized for 5 minutes for the purpose of opening  
899 statement.

|  
900 ^TESTIMONY OF ANNE TOTH

901 } Ms. {Toth.} Chairman Boucher and Rush, Ranking Member  
902 Stearns and Radanovich, members of the subcommittees, I  
903 appreciate the opportunity to appear before you today at this  
904 important hearing. My name is Anne Toth, and I am Yahoo!'s  
905 Vice President of Policy and Head of Privacy. I joined the  
906 company over 11 years ago and became one of the very first  
907 dedicated privacy professionals at any online company. Quite  
908 simply, my job is about making sure Yahoo! earns and  
909 maintains its users' trust each and every day. Yahoo! was  
910 founded by Jerry Yang and David Filo, who were trying to help  
911 people find information that was useful and relevant to them  
912 among the clutter of the early World Wide Web. What began as  
913 a directory of popular web sites quickly grew into a globally  
914 recognized brand that provides a wide range of innovative and  
915 useful products and services to 500 million users worldwide.

916 The Internet has changed a great deal, and this hearing  
917 recognizes its importance in our global economy. Gone are  
918 the days of one size fits all Internet content. Our  
919 consumers expect not only that Yahoo! will meet their needs,  
920 but that we will anticipate those needs as well. The same is  
921 true for advertising. Consumers are more likely to click on

922 advertising that speaks directly to them and their interests.  
923 For example, Yahoo! might deliver ads featuring hybrid cars  
924 if the users spend a great deal of time on Yahoo! Green or  
925 has recently browsed car reviews on Yahoo! Autos. Put  
926 simply, customized advertising helps consumers save time and  
927 energy. As you may know, Yahoo! offers our industry leading  
928 products and services larger for free.

929         Our business also depends almost entirely on the trust  
930 of our users. It has been paramount to our growth and is  
931 critical for our future success. Our approach to privacy  
932 couples front end transparency, meaningful choice, and user  
933 education with back end protections for data that limit how  
934 much information and how long personal identifiers are  
935 maintained. Let us start by talking about transparency. Our  
936 leading edge privacy center, which you can see on the slide  
937 that is being projected, provides easy navigation,  
938 information on special topics, and gives prominence to our  
939 opt-out page, and actually if we could move to the next  
940 slide, making it simple for users to find and exercise their  
941 privacy choices. We have also experimented with a number of  
942 ways to provide notice and transparency outside of standard  
943 privacy policies giving users multiple privacy touch points.

944         We must also put control in the hands of our users. We  
945 have an opt-out that now applies to interest-based

946 advertising both on and off the Yahoo! network of web sites.  
947 Whether a user touches us as a first party publisher or as a  
948 third party ad network, we want them to have a choice. We  
949 also didn't want users to have to redo their opt-outs again  
950 and again and took the further step of making our opt-out  
951 persistent for users who registered for a Yahoo! account.  
952 This means that these users who clear their cookies will not  
953 inadvertently clear their privacy choices at the same time.  
954 The final aspect of the front end of privacy protection is  
955 user education. For over a year, Yahoo! has displayed on  
956 average 200 million ads per month that explain our approach  
957 to privacy. All of these front end steps are complimented by  
958 back end protections.

959         We focus on security and data retention as core aspects  
960 of protecting back end privacy. We recently announced the  
961 industry's leading data retention policy. Under this policy,  
962 we will retain the vast majority of our web log data in  
963 identifiable form for only 90 days. This dramatically  
964 reduces the period of time we will hold log file data in  
965 identifiable form and vastly increases the scope of data  
966 covered by the policy. The limited exceptions for this  
967 policy are explained more fully in my written testimony. We  
968 believe that our front end, back end approach to privacy  
969 builds a circle of trust with users, providing transparency,

970 meaningful choice, and extensive education coupled with  
971 strong security and minimum data retention.

972         Much attention has been recently paid to the question of  
973 whether an opt-out or an opt-in approach to user control in  
974 the area of interest-based advertising is best. The answer  
975 is both. The decision about whether to ask for opt-in  
976 consent or give users the opportunity to opt out depends on  
977 the individual services being provided and the information  
978 being collected. Most advances in online privacy protection  
979 have come as a result of industry initiative and self-  
980 regulation. Market forces drive companies like Yahoo! to  
981 bring privacy innovations to customers quickly. As one  
982 company leads, many others follow or leap frog by innovating  
983 in new ways. So as Congress considers its role in helping  
984 protect consumer privacy online, Yahoo! hopes that  
985 legislators will consider an approach that enables providers  
986 to keep pace not only with technological advances but with  
987 customer demands and expectations as well.

988         I am very proud of Yahoo!'s record of trust and  
989 commitment to privacy, and the industry's history of  
990 responsible self-regulation. I look forward to sharing our  
991 experience with you in more depth and am happy to answer your  
992 questions. Thank you.

993         [The prepared statement of Ms. Toth follows:]

994 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
995           Mr. {Rush.} Thank you, Ms. Toth. Now the chair  
996 recognizes Ms. Wong. Ms. Wong, you have 5 minutes or  
997 thereabouts.

|  
998 ^TESTIMONY OF NICOLE WONG

999 } Ms. {Wong.} Chairmen Rush and Boucher, Ranking Members  
1000 Radanovich and Stearns, and members of the committee, I am  
1001 pleased to appear before you this evening to discuss online  
1002 advertising and the ways that Google protects our users'  
1003 privacy. Online advertising is critically important to our  
1004 economy. It promotes freer, more robust and more diverse  
1005 speech, and enables many thousands of small businesses to  
1006 connect with consumers across the nation and around the  
1007 world. It helps support the hundreds of thousands of blogs,  
1008 online newspapers, and other web publications that we read  
1009 every day. Over the last decade, the industry had struggled  
1010 with the challenges of providing behavioral advertising. On  
1011 the one hand, well-tailored ads benefit consumers,  
1012 advertisers, and publishers alike. On the other hand, we  
1013 recognize the need to deliver relevant ads while respecting  
1014 users' privacy.

1015 In March, Google entered the space and announced our  
1016 release of interest-based advertising for our AdSense partner  
1017 sites and for YouTube. Interest-based advertising uses  
1018 information about the web pages people visit to make the  
1019 online ads they see more relevant and relevant advertising

1020 has fueled much of the content, products, and services  
1021 available on the Internet today. As Google prepared to rule  
1022 out interest-based advertising, we talked to many users,  
1023 privacy and consumer advocates and government experts. Those  
1024 conversations led us to realize that we needed to solve 3  
1025 important issues in order to provide consumers with greater  
1026 transparency and choice, which are core design principles at  
1027 Google.

1028         First, who served the ad? Second, what information is  
1029 being collected and how is it being used? And, finally, how  
1030 can consumers be given more control over how their  
1031 information is used? This evening I would like to show you  
1032 how we answered each of those questions with the launch of  
1033 interest-based advertising, which includes innovative,  
1034 consumer-friendly features to provide meaningful transparency  
1035 and choice for our users. When you see an online ad today  
1036 you generally don't know much about that ad. It is difficult  
1037 to tell who provided the ad and how your information is being  
1038 collected and used. Google is trying to solve this problem  
1039 by providing a link to more information right in the ad, as  
1040 you can see, where it is labeled Ads By Google. This is very  
1041 different from current industry practices, but we believe  
1042 that it is important to provide users with more information  
1043 about the ad right at the point of interaction.

1044           We believe that this is a significant innovation that  
1045 empowers consumers and we think that this is the direction  
1046 that many in the industry are going. If you are curious  
1047 about getting information about the ad, you can click on the  
1048 Google link and navigate to an information page about Google  
1049 ads, which you can see here. On this page, you are invited  
1050 to visit our ads preference manager, which helps explain in  
1051 plain language user friendly format what information is being  
1052 collected, how it is being used, and how you can exercise  
1053 choice and get more information about how this advertising  
1054 product works. Here is the ads preference manager. This  
1055 innovative tool allows you to see what interests are  
1056 associated with an advertising cookie, the double click  
1057 cookie, that is set in the browser you are using.

1058           In this case, Google has inferred that my cookie should  
1059 be associated with hybrid cars, movie rentals and sales, and  
1060 real estate. This is because I visited sites using the  
1061 browser about hybrids, movies, and real estate. Before  
1062 Google introduced the ads preference manager, most users had  
1063 no idea what interests were being associated with their  
1064 cookies online by advertising companies. We are the first  
1065 major company to introduce this kind of transparency. Now  
1066 you can see those interests, and if you don't agree with  
1067 those interests, maybe you are not a movie fan or you simply

1068 don't want to see ads about movies, you can delete any one of  
1069 them or a few or as many as you want. So, for example, if  
1070 you want to delete movie rentals and sales, you can do that  
1071 with one click, and I have just done that.

1072         Likewise, you can add any interests you like. Note that  
1073 Google does not use sensitive categories so there is nothing  
1074 in here about sexual orientation, religious affiliation,  
1075 health status or the like, but there are many, many other  
1076 options. For example, if you are a sports fan you can  
1077 associate your cookie with sports, and with a click I have  
1078 decided that I would like to receive ads personalized for  
1079 sports fans. If you prefer not to see interest-based ads  
1080 from Google, you can opt out at any time with one click.  
1081 After you opt out, Google won't collect information for  
1082 interest-based advertising and you won't receive interest-  
1083 based ads from us. You will still see ads, but they may not  
1084 be as relevant. The opt-out is achieved by attaching an opt  
1085 out cookie to your browser. Opt out cookies in the industry,  
1086 however, have traditionally not been persistent. That is,  
1087 they are often inadvertently deleted from the browser when a  
1088 user deletes her cookies.

1089         So our engineers have developed a tool that was not  
1090 previously available that makes Google's opt out cookie  
1091 permanent even when users clear other cookies from their

1092 browsers. After you opt out, just click the download button  
1093 and follow the instructions to install a browser plug-in that  
1094 saves your opt out settings even when you clear your cookies.  
1095 I hope this gives you a better idea how Google shows  
1096 interest-based ads and how we provide users with transparency  
1097 in the right place at the right time, as well as meaningful,  
1098 granular, and user-friendly traces for setting ad preferences  
1099 or opting out. Thank you very much for your time.

1100 [The prepared statement of Ms. Wong follows:]

1101 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1102           Mr. {Rush.} Next, we welcome Mr. Kelly. Mr. Kelly, you  
1103 are recognized for 5 minutes.

|  
1104 ^TESTIMONY OF CHRISTOPHER M. KELLY

1105 } Mr. {Kelly.} Thank you very much. Chairman Rush and  
1106 Boucher, and Ranking Members Radanovich and Stearns, and  
1107 members of the subcommittees, thank you for this opportunity  
1108 to address important privacy matters on the Internet. We  
1109 agree with you that protecting privacy is critical to the  
1110 future growth of the Internet economy. Facebook now serves  
1111 more than 200 million active users worldwide, roughly 70  
1112 million of whom are in the United States. We are a  
1113 technology company that gives people the power to share their  
1114 lives and experiences in an authentic and trusted environment  
1115 making the world more open and connected. Facebook's privacy  
1116 settings give users control over how they share their  
1117 information allowing them to choose the friends they accept,  
1118 the affiliations they choose, and how their information is  
1119 shared with their friends, and, if they desire, the world at  
1120 large.

1121 Today, I would like to make four key points. First,  
1122 Facebook's user centric approach to privacy is unique,  
1123 innovative, and empowers consumers. Our privacy centric  
1124 principles are at the core of our advertising model. Second,  
1125 in offering its free service to users, Facebook is dedicated

1126 to developing advertising that is relevant and personal  
1127 without invading users' privacy, and to give users more  
1128 control over how their personal information is used in the  
1129 online advertising environment. Third, we primarily achieve  
1130 these objectives by giving users control over how they share  
1131 their personal information that model real world information  
1132 sharing and providing them transparency about how we use  
1133 their information in advertising.

1134 Fourth, the Federal Trade Commission's behavioral  
1135 advertising principles recognize the important distinctions  
1136 made by Facebook in its ad targeting between the use of  
1137 aggregate, non-personally identifiable information that is  
1138 not shared or sold to third parties versus other sites and  
1139 companies' surreptitious harvesting, sharing, and sale of  
1140 personally identifiable information to third party companies.  
1141 Facebook understands that few of us want to be hermits  
1142 sharing no information with anyone, nor do many of us want to  
1143 share everything with everyone, though some do want that.  
1144 Most people seek to share information with friends, their  
1145 family, and others that they share a social context with on a  
1146 regular basis seeking to control who gets our information and  
1147 how they have access to it. People come to Facebook to share  
1148 information. We give them the technological tools to manage  
1149 that sharing.

1150           Contrary to some popular misconceptions, full  
1151 information on Facebook users isn't even available to most  
1152 users on Facebook let alone all users of the Internet. If  
1153 someone is searching for new friends on Facebook all that you  
1154 might see about other users who are not yet her friends would  
1155 be the limited information that those users have decided to  
1156 make available. Most of our users choose to limit what  
1157 profile information is available to non-friends. That have  
1158 extensive and precise controls available to choose who sees  
1159 what among their networks and friends as well as tools that  
1160 give them the choice to make a limited set of information  
1161 available to search engines and other outside entities.

1162           We are constantly refining these tools to allow users to  
1163 make informed choices. Every day use of the site educates  
1164 users as to the power they have over how they share their  
1165 information and user feedback informs everything that we do.  
1166 Facebook is transparent with our users about the fact that we  
1167 are an advertising-based business and we explained to them  
1168 fully the uses of their personal data that they are  
1169 authorizing by interacting with Facebook either on  
1170 facebook.com or on the over 10,000 Facebook connect sites  
1171 throughout the web. Ads targeted to user preferences and  
1172 demographics have always been part of the advertising  
1173 industry. The critical distinction that we embrace in our

1174 advertising policies and practices and that we want this  
1175 committee to understand is between the use of personal  
1176 information for advertisements in personally identifiable  
1177 form, and the use, dissemination or sharing of information  
1178 with advertisers in non-personally identifiable form.

1179         Users should choose what information they share with  
1180 advertisers. This is a distinction that few companies make  
1181 and Facebook does it because we believe it protects user  
1182 privacy. Ad targeting that shares or sells personal  
1183 information to advertisers in name, e-mail or other contact  
1184 information without user control is materially different from  
1185 targeting that only gives advertisers the ability to present  
1186 their ads based on aggregate data. So to take in Dr.  
1187 Felten's example, if you were to navigate to the social  
1188 networking site, in his example if it were Facebook we would  
1189 not be sharing with the ad provider that he was Edward Felten  
1190 or that he likes jazz.

1191         So on Facebook a feed is established where people know  
1192 what they are uploading and receive timely reactions from  
1193 their friends. The privacy policy and users' experience  
1194 inform them about how advertising on the surface works.  
1195 Advertising that enables us to provide the service for free  
1196 to users is targeted to the expressed attributes of a profile  
1197 and presented no the space on the page allocated for

1198 advertising without granting an advertiser access to any  
1199 individual user's profile. Unless a user decides otherwise  
1200 by directly and voluntarily sharing information with an  
1201 advertiser, advertisers can only target Facebook  
1202 advertisements against non-personally identifiable attributes  
1203 of a user derived from profile data. Facebook builds and  
1204 supports products founded on the principles of transparency  
1205 and user control, and we thank you very much for the  
1206 opportunity to present our philosophy on online advertising  
1207 before this committee.

1208 [The prepared statement of Mr. Kelly follows:]

1209 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
1210           Mr. {Rush.} The chair thanks the gentleman. The chair  
1211 now recognizes Mr. Chester for 5 minutes.

|  
1212 ^TESTIMONY OF JEFFREY CHESTER

1213 } Mr. {Chester.} I want to thank the chairs and ranking  
1214 members and the members of the committee for their interest  
1215 in privacy for holding this hearing and to support their  
1216 efforts to, I think, help Americans get a fair digital data  
1217 deal and that is what they deserve. Just very quickly before  
1218 I make 4 points, I submitted my testimony in writing. It  
1219 tries to lay out for the committee the broad parameters of  
1220 the interactive advertising system as we know it in the  
1221 United States, all the various elements that now are shaping  
1222 this very powerful system so you can look at that if you want  
1223 more information. I have been working on these issues for 15  
1224 years looking at online advertising, online marketing,  
1225 digital communications. I last worked closely with the  
1226 Commerce Committee back in 1998 when we led the campaign that  
1227 established with your legislation the Children's Online  
1228 Privacy Protection Act. Right now, that is the only online  
1229 privacy law. It was a bipartisan effort. And what we did  
1230 for kids, we now need to do for teens and adults.

1231 Imagine the world, and this is the world that we have  
1232 created and you have already spoken about it, both the chair  
1233 spoke about it, Mr. Barton spoke about it, others have spoke

1234 about it. Imagine a world where every move, you are being  
1235 watched, whatever contents you read, what you buy, how much  
1236 you are willing to spend, and how much you are not willing to  
1237 spend, where you go, what you like, what you don't like, all  
1238 that being compiled. Outside databases being used to even  
1239 build up this even larger profile of who you are. You  
1240 include your race, whether you are a low income or middle  
1241 class. They call it on the online ad industry digital  
1242 fingerprints or user DNA but this very powerful system that  
1243 is invisible and unaccountable to the average American is  
1244 constantly collecting and refining and storing all this  
1245 information and making claims and assumptions about you, your  
1246 reputation without any accountability to you as the consumer  
1247 let alone as the citizen.

1248 That is the online advertising system today as we know  
1249 it. It is different from traditional advertising because as  
1250 you, yourself, described it is able to track you minute by  
1251 minute, minute by second, and your information is being sold  
1252 in online ad auctions in milliseconds. They know who you are  
1253 and they are selling access to it, so it is an incredible  
1254 system that we have created. And it is now meshed in almost  
1255 everything we do online, watching online videos, even e-mail,  
1256 doing searches, playing games. This broad data collection  
1257 system is a digital data collection arms race going on as

1258 they build this incredibly sophisticated system. And I want  
1259 to make it clear for my second point that our call for  
1260 privacy and consumer protection rules isn't about undermining  
1261 the role of online advertising and marketing. That has an  
1262 important role to play. It is the underpinning, the  
1263 foundation of our modern publishing system or really our new  
1264 way of life in the digital age. We need to have online  
1265 advertising and marketing, but we need to--and it is not  
1266 about any particular company here or sense of companies. It  
1267 is about the overall practices that the industry has created  
1268 to collect all this information and to use all this  
1269 information with these very powerful multi-media, in their  
1270 words, immersive online advertising services that are not  
1271 understandable and controllable and definable by consumers.

1272 I think to me it is very clear that you look at the  
1273 issue of what is called sensitive data, which I am hoping you  
1274 are going to work on, and in particular financial data. When  
1275 you look at what happened during the recent financial crisis  
1276 online advertising played a major role in encouraging people  
1277 to take out those subprime mortgages. Online advertisers and  
1278 mortgage companies were some of the biggest advertisers on  
1279 the Internet during the boom period that led to this current  
1280 crisis. People had no idea when they were taking out a  
1281 mortgage or taking out a loan what exactly they were getting

1282 because this system was defining them in certain ways and  
1283 making them various offers, once again, non-transparent to  
1284 them, and as result, they, and I think we, have had to face  
1285 the consequences.

1286         That is just as with the financial system, we need some  
1287 regulation here that puts the system into balance. Yes, they  
1288 can try to build this business and we can be innovators, but,  
1289 yes, consumers get to ensure what data is being used and how  
1290 it is used, and they have a chance to change it if it is  
1291 incorrect. So consumer groups around the country are calling  
1292 on you to enact legislation as soon as possible to bring fair  
1293 information principles up to the digital era. Self-  
1294 regulation has failed. They have been working, with all due  
1295 respect to my friends here, they have been working on self-  
1296 regulation for 15 years and all you have is more and more  
1297 data collected every minute. Americans shouldn't have to  
1298 trade away their rights to control their information and have  
1299 some autonomy in their affairs, whether it is buying a  
1300 mortgage, looking up a prescription drug, buying a car or  
1301 doing anything else without having to give their data up.  
1302 There is a balance. I hope you will help us restore it.  
1303 There is a win-win possible here. Thank you.

1304         [The prepared statement of Mr. Chester follows:]

1305 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1306           Mr. {Rush.} Thank you, Mr. Chester. Now the chair  
1307 recognizes Mr. Curran for 5 minutes.

|  
1308 ^TESTIMONY OF CHARLES D. CURRAN

1309 } Mr. {Curran.} Thank you, Chairman Rush, Chairman  
1310 Boucher, and members of the subcommittee. I would like to  
1311 thank you on behalf of the Network Advertising Initiative for  
1312 the opportunity to discuss both the economic benefits and the  
1313 privacy obligations of online behavioral advertising. The  
1314 NAI is a coalition of advertising networks and other online  
1315 marketing companies dedicated to responsible business  
1316 practices and effective self-regulation. Originally founded  
1317 9 years ago, the NAI has grown to include more than 30  
1318 leading online advertising companies including all 10 of the  
1319 largest advertising networks. Today, through the NAI's web  
1320 site consumers can learn more about or opt out of online  
1321 behavioral advertising by any or all of the NAI's member  
1322 companies across the many thousands of web sites on which  
1323 such advertising is served. Today's hearing focuses on both  
1324 industry practice and consumer expectations.

1325 The NAI and its members are committed to online  
1326 advertising practices that strike the right balance between  
1327 consumers' economic and privacy expectations. We believe  
1328 that consumers enjoy the diverse range of web sites and  
1329 services that they get for free thanks to relevant

1330 advertising, but we must also provide consumers with  
1331 meaningful notice and choice. Tens of millions of Americans  
1332 benefit every day from free web content and services made  
1333 available on the web because of banner advertising served by  
1334 NAI members, These ad-supported services include news,  
1335 blogs, video, photo sharing, and social networking services.  
1336 NAI members support these web sites by connecting them with  
1337 advertisers and by using web browser cookies to serve their  
1338 visitors with more relevant and compelling advertisements.

1339 NAI members provide web sites with a broad variety of  
1340 services. They help smaller web sites, combined their  
1341 audiences so they can attract larger advertisers. They help  
1342 advertisers gauge the success of their campaigns across  
1343 multiple sites, and they also make online advertising more  
1344 interesting and useful to consumers by using non-personally  
1345 identifiable information about users activity within an ad  
1346 network to try to predict their likely interests. In the  
1347 early days of online behavioral advertising more than 10  
1348 years ago advocates and regulators challenged industry to  
1349 provide appropriate privacy protections around browser  
1350 cookies. The NAI self-regulatory code was established to  
1351 meet that challenge and continues today to apply the same  
1352 core principles for our members. First, users should receive  
1353 clear and conspicuous notice on the web sites that they visit

1354 where data is collected and used.

1355           Second, users should have the ability to opt out of  
1356 behavioral advertising. Third, sensitive data should not be  
1357 used for online behavioral advertising without a user's  
1358 affirmative consent. Fourth, a user's affirmative consent  
1359 should also be obtained if personally identifiable  
1360 information is merged with information previously gathered  
1361 about the user's web browsing with an ad network. As these  
1362 technologies have matured and the online market place has  
1363 diversified, the Federal Trade Commission has called on  
1364 industry to broaden and enhance its approach to self-  
1365 regulation. The NAI and its member companies believe that  
1366 self-regulatory approaches should be as dynamic as the online  
1367 market place that they serve, and we are moving quickly to  
1368 respond.

1369           The NAI members companies are working to develop  
1370 technologies that would support and enhance consumer notice  
1371 in or around behaviorally based banner ads. This would allow  
1372 users to learn more about behavioral advertising and to make  
1373 choices directly from the ad itself. Additionally, to help  
1374 protect users' choices, the NAI is implementing technology to  
1375 improve the durability of user opt out preferences stored in  
1376 browser cookies. The NAI believes that its current opt out  
1377 approach strikes the right balance and consumers'

1378 expectations for today's cookie-based advertising. The model  
1379 combines an opt out for the use of non-sensitive, non-  
1380 personally identifiable information to deliver ads with an  
1381 opt in requirement for use of sensitive or personally  
1382 identifiable data. This preserves a default experience in  
1383 which web sites provide users with more rather than less  
1384 relevant advertising.

1385       Users have multiple options to control behavioral  
1386 advertising either by using opt outs offered by the NAI's  
1387 members or their own easily accessible web browser tools.  
1388 Any significant changes to this model such as requiring a  
1389 user's opt in even to non-personally identifiable uses of  
1390 cookies to improve the relevance could pose a profound risk  
1391 to both the user's experience and the economic model for ad-  
1392 supported web services. As they navigate from site to site,  
1393 consumers could be inundated with recurring opt in prompts  
1394 asking their permission to serve relevant ads. Consumer  
1395 rejection of this approach could uproot the revenue model  
1396 that supports many web sites today. It is vital to the  
1397 continued growth of web services that the right balance is  
1398 struck between the economic, technological, and consumer  
1399 protection considerations relating to online advertising.  
1400 The NAI looks forward to working with the subcommittees as  
1401 they consider these important online privacy issues. Thank

1402 you.

1403 [The prepared statement of Mr. Curran follows:]

1404 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1405           Mr. {Rush.} The chair thanks the gentleman. Now the  
1406 chair recognizes Mr. Cleland for 5 minutes.

|  
1407 ^TESTIMONY OF SCOTT CLELAND

1408 } Mr. {Cleland.} Thank you, Mr. Chairman, both you and  
1409 the ranking member. As a leading Internet expert and  
1410 consultant, I obviously have Internet companies as clients,  
1411 which include wireless cable and telecom broadband companies  
1412 in the communications sector, and Microsoft in the tech  
1413 sector. However, I want to emphasize my views today are my  
1414 personal views and not those of any of my clients. What I  
1415 want to do is talk about the Internet problem and Internet  
1416 solution. So what is the Internet privacy problem? Well,  
1417 technology has turned privacy upside down. Before the  
1418 Internet, it was inefficient, it was costly, and it was  
1419 difficult to collect private information. Now it is hyper-  
1420 efficient, cheap and easy to invade privacy. So through  
1421 inertia what we have is a default, finders keepers, losers  
1422 weepers, privacy policy.

1423 Now, second, most Americans incorrectly assume that the  
1424 privacy they enjoyed offline in the past is the privacy they  
1425 have online, and that is not true. Third, all the technology  
1426 megatrends out there, social networking, cloud computing,  
1427 Internet mobility, Internet of Things, all of them will  
1428 dramatically increase privacy risks online. Fourth, there is

1429 a significant faction in the technology community that really  
1430 views privacy negatively and in some parts antithetical to  
1431 the behavioral advertising and the Web 2.0 model. Now,  
1432 fifth, a problem is that increasingly the underground  
1433 currency of the Internet is private data. Now private  
1434 information is very valuable, but in the absence of a system  
1435 where consumers can assert ownership and control over their  
1436 private information, privacy can be taken away from them for  
1437 free and profited from with no obligation to or compensation  
1438 due to the affected consumer.

1439         The sixth part of the problem, and that is we now have a  
1440 technology-driven Swiss cheese privacy framework, which may  
1441 be the worse of all possible worlds. Simply, the haphazard  
1442 framework we have gives a user no meaningful informed choice  
1443 to either protect themselves or benefit themselves in the  
1444 market place arena of their private information. So what is  
1445 the solution? I think it is very simple. You have a  
1446 consumer-oriented, consumer centric approach that is  
1447 technology and competition neutral. Think about it. It is  
1448 consumers' private information that is being taken and  
1449 exploited without their consent. Since it is consumers that  
1450 are most at risk of having their information misused or  
1451 stolen, wouldn't it be logical for our privacy framework to  
1452 be organized around the consumer?

1453           Now, clearly, businesses should be free to fairly  
1454 represent and engage consumers in a fair market transaction  
1455 for their private information. Now its fair market  
1456 transaction where consumers are able to effectively  
1457 understand and negotiate the risk and reward involved with  
1458 sharing the private information. Moreover, since the  
1459 consumer is the only one that knows which information about  
1460 their personal situation or their views or their intentions  
1461 or their interests, which ones they are comfortable with  
1462 sharing, shouldn't it be the consumer that is empowered to  
1463 make those decisions? So if Congress decides that it is  
1464 going to legislate in this area, I think one thing is  
1465 obvious, and that thing is that you should have consumer  
1466 framework that would be superior to the current technology-  
1467 driven framework. That is because it would emphasize  
1468 protecting people, not technologies. It would empower  
1469 consumers with both the control and the freedom to choose to  
1470 either protect or to exploit their privacy.

1471           It would prevent competitive arbitrage by creating a  
1472 level playing field. And it would allow you to stay current  
1473 with the constant changing innovation because you are not  
1474 technology oriented, you are consumer oriented. And, lastly,  
1475 you are going to be able to accommodate both sides, the  
1476 people who care very much to protect their privacy but also

1477 those who care less and would like to exploit their private  
1478 information. So in closing I think we can do better than the  
1479 current finders keepers, losers weepers privacy policy that  
1480 is the de facto policy of the United States. Thank you, Mr.  
1481 Chairman, and ranking member for the opportunity to testify.

1482 [The prepared statement of Mr. Cleland follows:]

1483 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|

1484           Mr. {Rush.} The chair thanks the gentleman. Now the  
1485 committee will engage the witnesses in a series of questions,  
1486 and the chair recognizes himself for 5 minutes for the  
1487 purpose of questioning the witnesses. Ms. Toth, in your  
1488 testimony you discuss meaningful choice for consumers, and  
1489 this is a principle that everyone agrees is a good one.  
1490 However, it appears that the only choice for consumers using  
1491 Yahoo! is to opt out of receiving ``interest-based  
1492 advertising.'' It seems that they can't opt out of Yahoo!'s  
1493 collection of information and tracking. Can you clarify  
1494 exactly what the consumers' choice is with Yahoo!'s opt out?  
1495 If consumers ask to opt out of behavioral advertising, does  
1496 your company continue to collect data on their browsing  
1497 habits?

1498           And I have another question. Does the opt out only stop  
1499 the displaying of targeted advertising or does it stop the  
1500 collection of data? Does your firm offer consumers any way  
1501 to opt out of tracking and data collection? Would you answer  
1502 those three questions for me, please?

1503           Ms. {Toth.} Our opt out, you are correct, it is not an  
1504 opt out of collection of data. It is an opt out of use of  
1505 data. So there are a number of reasons why we collect data  
1506 and primarily that relates to the display of advertising, so

1507 advertisers pay us to show advertisements, and so we have to  
1508 know if those ads were delivered and shown so we collect  
1509 information in order to report that information back to the  
1510 advertisers who are paying for those ads. But another reason  
1511 why has a lot to do with the way we operate our web site, so  
1512 if we were to stop collecting data when a user opts out then  
1513 there are a number of users we suspect would opt out and  
1514 engage in behaviors on the site that may not be legitimate  
1515 behaviors that may be abusive or fraudulent behaviors. So we  
1516 are continuing to collect information, but when the user opts  
1517 out we are no longer showing them behavioral advertisements.  
1518 We are opting them out of that use of their data.

1519         So we are a web site that offers a number of different  
1520 services. Ad serving is one of our many businesses, so we  
1521 have other uses for the data as I described. I am not sure  
1522 if I understood the other question specifically as being  
1523 different from that one. I maybe misheard. So the extent  
1524 that data is no longer used for advertising, that is what the  
1525 opt out applies to. But the opt out that we offer is  
1526 actually a very--it is very clearly provided to users, and it  
1527 is actually very easy to find, so we think that that actually  
1528 matters a great deal. The other thing actually that I will  
1529 mention is that what we offer on the back end is  
1530 anonymization of that data within 90 days so if users have a

1531 concern that there is a great deal of data being collected,  
1532 we hope to be addressing that on the back end by anonymizing  
1533 the vast majority of our data within 90 days.

1534           What is really notable about that is that our policy  
1535 doesn't just apply to search log records or to a specific  
1536 type of log file that all of our log systems including the  
1537 log systems that inform our advertising capabilities.

1538           Mr. {Rush.} So a consumer cannot opt out of data  
1539 collection at all?

1540           Ms. {Toth.} The consumer can't opt out through--

1541           Mr. {Rush.} Cannot. They cannot opt out of data  
1542 collection.

1543           Ms. {Toth.} No. There are other tools at the browser  
1544 level that would address that. Our systems don't work that  
1545 way.

1546           Mr. {Rush.} Ms. Wong, can you answer the same questions  
1547 for me?

1548           Ms. {Wong.} Sure. Let me start by sort of describing  
1549 our approach to privacy and data collection on our sites  
1550 generally because I don't know if you are a regular Google  
1551 user. Google actually has a design philosophy of always  
1552 trying to minimize the amount of data we collect about a user  
1553 in the first instance, so almost all of our services actually  
1554 don't require a user to provide any personal information at

1555 all. When you go to Google Search, you don't have to  
1556 register. You simply type in your search. If you type in a  
1557 search and you are not signed in or registered with us what  
1558 that means is the only thing we get back is what all of us  
1559 here, what all web sites get, which is sort of a standard  
1560 what we call log line that records--a computer is asking you  
1561 a question and that question comes with two things that can  
1562 be identifying a user. One is an IP address, which your ISP  
1563 assigns to you, and the other is a cookie, which is what Anne  
1564 referenced.

1565         Neither of those things for Google are tied to an  
1566 individual. You can't know it is Nicole or Chris or Anne  
1567 based solely on the IP address and the cookie. Just to be  
1568 clear about the type of data we collect, we do provide an opt  
1569 out, as I was demonstrating in our presentation, for the use  
1570 of that cookie and IP address data to target ads. In other  
1571 words, when you click on the opt out what it does is instead  
1572 of getting a unique cookie, which is a series of numbers and  
1573 letters, what you get is what we call the opt out cookie, and  
1574 that opt out cookie literally says in it opt out so that the  
1575 data that we collect goes into a huge pool of all users who  
1576 have the same opt out cookie. It is completely abrogated  
1577 which means we can't see an individual user in that pool of  
1578 data that has been identified as opt out.

1579           Mr. {Rush.} The chair's time is up. The chair now  
1580 recognizes the ranking member, Mr. Radanovich, for 5 minutes,  
1581 and at the conclusion of his questions and answers, the chair  
1582 will relinquish the chair to the chairman of the  
1583 Communications Subcommittee at that point.

1584           Mr. {Radanovich.} Thank you, Mr. Chairman, and welcome  
1585 members of the panel. Your testimony is very interesting.  
1586 My first question goes to Mr. Curran, is it? For your  
1587 testimony, I understand that you are involved in a broad  
1588 industry-wide effort to create self-regulating principles,  
1589 and that these principles, you are going to be releasing  
1590 these principles pretty soon, I understand within about 30  
1591 days. Can you expand a little bit on what we can expect you  
1592 to address on those, and I am particularly interested about  
1593 the enforcement areas of these principles.

1594           Mr. {Curran.} Actually I think there are two different  
1595 answers to your question because there are two different  
1596 things going on, and in my long form testimony I detailed  
1597 some of the work going on with the NAI in terms of our member  
1598 companies, which are primarily advertising networks and other  
1599 online marketing companies, to essentially further the  
1600 development of technology that will allow, as Ms. Wong showed  
1601 you with her presentation, notice inside the banner ad really  
1602 to get together to advance an infrastructure that would allow

1603 any entity serving a behaviorally targeted ad or any party  
1604 responsible for a behaviorally targeted ad to deliver that  
1605 kind of notice in connection with an ad.

1606 Mr. {Radanovich.} So that is work that the NAI has been  
1607 pursuing from a technological perspective?

1608 Mr. {Curran.} Separately, I think your question relates  
1609 to a far broader industry dialogue that has been not led by  
1610 the NAI but instead by the IAD, the DMA, the AAAA's, the ANA,  
1611 and also the BBB. That is a lot of acronyms.

1612 Mr. {Radanovich.} That is much clearer now.

1613 Mr. {Curran.} I think the key takeaway here is that  
1614 certainly the FTC has indicated that broader self-regulatory  
1615 approaches were needed for industry, and that is very much an  
1616 effort in that direction of actually establishing principles  
1617 similar in spirit to those of the NAI to apply on an  
1618 ecosystem wide basis. My understanding is that the roll out  
1619 of those principles is in weeks. And we are very much  
1620 supportive of those efforts, and I think they are very much a  
1621 part of a trend of really a momentum towards exactly what the  
1622 FTC called for in terms of really a very vigorous engagement.

1623 Mr. {Radanovich.} Thank you very much. Ms. Wong, I  
1624 would love to ask you a question regarding your comments or  
1625 support of establishing a uniform online and offline  
1626 framework for privacy. Now I would love to have you clarify

1627 what uniform means and does it mean that it should apply to  
1628 all entities and engage in collecting or using and sharing  
1629 online information whether they are ISPs or application  
1630 providers? Should it be straight across the board or are  
1631 there different applications?

1632 Ms. {Wong.} Yes. And I think there are two answers to  
1633 that. As an initial matter, Google and a number of the folks  
1634 at the table here have been really working hard to think  
1635 about federal comprehensive privacy legislation, and if I  
1636 were to encourage the committee to do anything I think it is  
1637 backing something like that because our history on privacy  
1638 legislation has really been about sectorally trying to  
1639 regulate privacy with children, with health, with financial,  
1640 so that for a user on the Internet their Internet experience  
1641 is seamless. They go from their bank to their doctor to  
1642 their web service seamlessly and don't realize that different  
1643 privacy laws apply. The important for ensuring that users  
1644 continue to trust the use of their data on the Internet is to  
1645 have baseline privacy law across industries. To get to your  
1646 second question about--

1647 Mr. {Radanovich.} Let me ask this and clarify it a  
1648 little bit. When you say uniform, does that apply to content  
1649 providers that provide content over Google? Would they be  
1650 subject to the same--is that what you call uniform online

1651 privacy?

1652 Ms. {Wong.} Right. So, yes, there would be baseline  
1653 standards for all companies in terms of notice to users,  
1654 access and control for users, and security for that data.

1655 Mr. {Radanovich.} Okay. Thank you. Ms. Toth, in  
1656 Yahoo! recently you announced that you will completely erase  
1657 IP addresses at the end of its data retention period rather  
1658 than just deleting a few numbers as is the practice of a  
1659 number of your competitors. If you don't need the IP  
1660 addresses for fraud prevention or anything else, what is the  
1661 utility in keeping the IP address at all, and why the  
1662 fractional numbers of why don't you just dump it right away?

1663 Ms. {Toth.} I think we actually have slides in there of  
1664 our data retention policy and the process steps that we take  
1665 so for the vast majority of our data at 90 days we de-  
1666 identify the data. We apply a four-step process to remove  
1667 identifiers. The IP address is one of those identifiers that  
1668 is stored in the logs, and for us we completely delete that  
1669 identifier at 90 days with the exception of the fraud and  
1670 abuse systems which hold it for up to 6 months and then it is  
1671 deleted. So we store that data only for as long as we need  
1672 it for the purposes of providing our services and then we de-  
1673 identify the records and that gets to the IP address. The IP  
1674 address is typically in the context of use have more to do

1675 with customizing a user's experience along the lines of  
1676 geography, those sorts of things. But it is de-identified  
1677 and it is removed at 90 days. Does that answer your  
1678 question?

1679 Mr. {Radanovich.} Good enough. Thank you very much.

1680 Mr. {Boucher.} [Presiding] Well, I again want to  
1681 express apologies to our witnesses for the lengthy delay. We  
1682 were on the House floor a bit longer than we had anticipated,  
1683 and you were very patient. We want to express the  
1684 committee's appreciation to you for your willingness to stay  
1685 with us and provide what has been some truly excellent  
1686 testimony. I am going to propound a series of questions and  
1687 then recognize other members who are here. Some have made  
1688 the point in written testimony, and I have heard it made  
1689 otherwise, apart from this hearing, that there can be a  
1690 meaningless opt in and a meaningful opt out. And I would  
1691 assume that the difference with regard to meaningfulness  
1692 depends to some extent on the degree of disclosure that is  
1693 made to the user. So what I would like is to get your  
1694 statement of what you think the elements of a meaningful opt  
1695 out would be. Who would like to answer? Mr. Chester.

1696 Mr. {Chester.} I would like to say, thanks, that I  
1697 think we need an opt in. And my rule of thumb is, and this  
1698 has to be done in a doable way to make--

1699 Mr. {Boucher.} Mr. Chester, before you alter the  
1700 question and answer the question you wish I had asked, let me  
1701 see if we can get you or someone to answer the question I  
1702 actually did ask. Ms. Wong.

1703 Ms. {Wong.} I will give it a try. And I agree with the  
1704 concept of there are good opt outs and there are bad opt ins.  
1705 I think a bad opt in is, you know, an opt in slipped in in a  
1706 long provision at the beginning of a contract relationship  
1707 with your user that they forget over time, and so there could  
1708 be continued data collection in the life of your relationship  
1709 with that user that the user completely forgotten about. A  
1710 good opt out is an opt out that is presented again and again  
1711 to the user as a meaningful choice to them. So in our  
1712 interest-based advertising, for example, one of the things  
1713 that we are trying to do is to put ourselves in front of the  
1714 user so that we encourage them to engage with their own data.  
1715 That is the purpose of that Ads by Google link in the ad  
1716 because we want them to know when you are looking at this  
1717 page it is not just the New York Times you are looking at.  
1718 The ad is from Google, and you should engage with that data.  
1719 The purpose of our ads preference manager is again to give  
1720 the users a sense of control so that they change their  
1721 behavior and start to engage and take control of their own  
1722 data. And I think that--

1723 Mr. {Boucher.} So you would make full disclosure to the  
1724 user of what information is collected about the user. You  
1725 would describe how that information is used once you have  
1726 collected it and then you would provide the opt out  
1727 opportunity?

1728 Ms. {Wong.} That is right.

1729 Mr. {Boucher.} And would those be the meaningful  
1730 elements of opt out as far as you are concerned?

1731 Ms. {Wong.} I think that is right. The continued  
1732 engagement with the user.

1733 Mr. {Boucher.} All right. Now let me ask Mr. Chester  
1734 who I know is very interested in taking part in this  
1735 discussion what his response to that would be.

1736 Mr. {Chester.} Well, my rule of thumb is this, it has  
1737 to be done workably. The companies should be telling the  
1738 consumer what they tell perspective clients. When you see  
1739 what--and I included some of that in my testimony, when you  
1740 see what they are telling their clients and their perspective  
1741 clients or when they are reporting on the results of the data  
1742 collection system they have created with the advertising,  
1743 they are talking about massive collection of data that is far  
1744 beyond the kin of what might be presented in a simple opt  
1745 out. So they need to be honest and tell people exactly what  
1746 is about to happen. It can be a scale here, but if you read

1747 what they are doing including, frankly, the companies here,  
1748 if you read what they are saying and also how the  
1749 applications, the interactive applications, when you read the  
1750 literature, the interactive applications have been designed,  
1751 the online video, to get people to give up more data, so they  
1752 have to be honest.

1753         Mr. {Boucher.} All right. Thank you very much. If we  
1754 were to draw a regulatory line of some sort that is focused  
1755 on the collection and use of personally identifiable  
1756 information, should we include within the definition of what  
1757 is personally identifiable information, the IP address? Mr.  
1758 Chester is saying yes. Let me see if any have any different  
1759 views. Everyone agrees that--well, okay, Ms. Wong.

1760         Ms. {Wong.} I will give it a try again. I think our  
1761 position is that the IP address can be personally identifying  
1762 depending on your relationship with the user so, for example,  
1763 if you are the ISP that assigned that IP address what it  
1764 means is that you are actually billing that user every month  
1765 and having credit card or billing information from them,  
1766 which means you can in fact associate the IP address the ISP  
1767 assigned with a real person. If you are in a position like  
1768 Google with an unauthenticated user where you don't know who  
1769 is attached to an IP address it is not personally  
1770 identifiable.

1771 Mr. {Boucher.} So you are saying it would be personally  
1772 identifiable if it is associated with other kinds of  
1773 information about the user?

1774 Ms. {Wong.} That is right.

1775 Mr. {Boucher.} Some of which might be quite sensitive  
1776 and personal.

1777 Ms. {Wong.} That is right.

1778 Mr. {Boucher.} You would probably say it is not  
1779 personally identifiable if you have that in isolation perhaps  
1780 with an opt out cookie?

1781 Ms. {Wong.} Right.

1782 Mr. {Boucher.} All right. I think I understand your  
1783 position. In the time I have remaining, let me ask about the  
1784 possible role that self-regulatory organizations might play  
1785 in a statutory scheme that would extend privacy rights to  
1786 Internet users. Several questions about that. I know we  
1787 have well-regarded SROs in existence today. Many of the  
1788 major Internet companies are affiliated with one or more  
1789 SROs, and I am concerned if we add a statutory scheme on top  
1790 of that in order to assure that every Internet user has the  
1791 understanding that his online experience is secure because  
1792 all web sites will have to comply with a certain set of  
1793 fundamental privacy assurances. How we do that in  
1794 association with continued viability and usability for the

1795 SROs so just a couple of key questions. How would a user who  
1796 feels aggrieved because the SRO, for example, may not have  
1797 complied with the principles it signed up to comply with get  
1798 recourse? Should there at some point be access to a federal  
1799 agency to seek that resource? And how could we make sure  
1800 that every web site actually complies with the minimum set of  
1801 guarantees? So who would like to try answering that? Mr.  
1802 Cleland.

1803 Mr. {Cleland.} Well, I think, you know, you are trying  
1804 to get to something that actually works, and I think you are  
1805 trying to get to an accountable system. One idea I would  
1806 offer whether it is self-regulatory or governmental is that  
1807 there needs to be some audit that is occurring on a regular  
1808 basis. Those could be automated audits or they can be  
1809 personalized. They need to be random because what you are  
1810 talking about is meaningful. We are talking about  
1811 accountable. And if you care about those two words and those  
1812 two concepts and principles, there needs to be some  
1813 verification.

1814 Mr. {Boucher.} Other comments, Mr. Chester?

1815 Mr. {Chester.} There is a role for self-regulation, but  
1816 I just have to underscore that self-regulation has failed.  
1817 The only reason the NAI is upgrading its principles is  
1818 because of the controversy that occurred over the Google

1819 double click merger when all these consumer privacy groups  
1820 made so much trouble that then the FTC said, okay, we got to  
1821 do something about privacy principles, and then the NAI after  
1822 many years of being asleep, you know, decided, okay, we are  
1823 going to revamp them. The only reason the companies have  
1824 reduced their retention time is because the European Union  
1825 has been pressing them. So it is the forces of regulation  
1826 that has actually bolstered the failing self-regulatory  
1827 system.

1828         Mr. {Boucher.} So you would agree, would you not, Mr.  
1829 Chester, that if the statute imposed certain fundamental  
1830 guarantees and they meet your definition of what those  
1831 fundamental guarantees of privacy should be, for example,  
1832 that an SRO that enforces those fundamental guarantees or has  
1833 those as its core principles that are a condition of  
1834 membership such an SRO could be effective, could it not?

1835         Mr. {Chester.} I think the history of self-regulation  
1836 certainly need telecommunications like the kids area has been  
1837 that the self-regulatory structure is only as good as the law  
1838 that has in fact--

1839         Mr. {Boucher.} On that note, my time has expired. And  
1840 I will recognize the gentleman from Florida, Mr. Stearns, for  
1841 5 minutes.

1842         Mr. {Stearns.} Thank you, Mr. Chairman, and let me also

1843 reiterate your comments. This is the first time I think in  
1844 the history of Congress that we had this kind of procedure on  
1845 the floor. We had almost 55 votes, and they were over almost  
1846 8 hours. And so you have hit sort of a perfect storm so your  
1847 patience is appreciated and we appreciate you staying. Ms.  
1848 Toth and Ms. Wong, on any given day people come to your  
1849 sites. Let us call that X. They all come to your sites.  
1850 What percent of those people actually go to your privacy, Ms.  
1851 Toth?

1852 Ms. {Toth.} We don't calculate it as a percentage.  
1853 Overall, the number of page views of users who come to our  
1854 privacy policy remains a fairly low number overall.

1855 Mr. {Stearns.} So let us say just take 1,000 people  
1856 just to make it easy, 1,000 people. You couldn't even tell  
1857 me if it is 10 percent or 1 percent or half a percent?

1858 Ms. {Toth.} It certainly is far lower than 1 percent.

1859 Mr. {Stearns.} So it is very, very small. And, Ms.  
1860 Wong, how about you?

1861 Ms. {Wong.} I don't know, and I can try and get back to  
1862 you with the number, but off the top of my head I don't know  
1863 the number of views.

1864 Mr. {Stearns.} No one on your staff can even just give  
1865 a ballpark? I mean it is not 10 percent?

1866 Ms. {Wong.} I am sure it is lower than the number of

1867 overall visits we get. Here is what I do know, which is that  
1868 a year ago or so we started uploading videos to explain our  
1869 privacy practices, and what we are seeing there is that users  
1870 are engaging with us in those--

1871 Mr. {Stearns.} Because it is a video. Okay.

1872 Ms. {Wong.} Because it is a video and they are rating  
1873 them and telling us what works for them and what doesn't, and  
1874 I know that notice is a really important thing for this  
1875 committee. We have to find better ways than a pure privacy  
1876 policy to engage with our users to make them--

1877 Mr. {Stearns.} And videos might be a good way.

1878 Ms. {Wong.} And videos--

1879 Mr. {Stearns.} Now each of you mentioned that you are  
1880 willing to give to the consumer the information that you have  
1881 collected and get it in sort of a category. And is this  
1882 information that you are going to give--this is then  
1883 sensitized or you have put together a summary and given it to  
1884 the customer. Will you let the user actually see the raw  
1885 data or at least actually see what you collect? Will you  
1886 ever get to the point they can actually see what you collect?

1887 Ms. {Toth.} I would actually love it if we could--I  
1888 would like you to see some of the data that we actually do  
1889 collect because I think it--

1890 Mr. {Stearns.} So I could actually see it if I wanted

1891 to.

1892 Ms. {Toth.} Right.

1893 Mr. {Stearns.} And not just get your categories--

1894 Ms. {Toth.} We have a slide that shows our log files or  
1895 a sample of what we collect in the log files. I don't think  
1896 actually a consumer would engage with that in a way that  
1897 would be meaningful for the consumer because it is a very  
1898 technical expression of a user's interaction with us on the  
1899 site so what we do in our interest-based advertising and the  
1900 behavioral targeting systems that we use is to take those  
1901 visits and categorize them based on the types of interaction.  
1902 So if a user visits sports, they will have a score that  
1903 indicates they visit sports. The actual log files themselves  
1904 would probably not be useful for a consumer to engage with.  
1905 It is a series of--it is actually quite difficult to explain  
1906 in plain English what is in a log file.

1907 Mr. {Stearns.} Okay, but the customer would have access  
1908 to it is what you are saying if they wish to?

1909 Ms. {Toth.} Well, the customer--we don't actually make  
1910 it available because there are no tools that actually  
1911 generate log files in a way that would be easily accessible  
1912 for consumers. What we give consumers is ready access to our  
1913 privacy policy, educational links, opt out opportunities that  
1914 are abundant across the site.

1915 Ms. {Wong.} The demo that we did for you about our ads  
1916 preference manager is an attempt to make that interface real  
1917 which is demonstrating the interest categories that are  
1918 assigned to a cookie in order to target advertising because I  
1919 think Anne is correct that if a user won't read a privacy  
1920 policy they are surely not going to read code.

1921 Mr. {Stearns.} Okay. Mr. Chester, before you can  
1922 answer that question also, what do you do with the bad  
1923 actors? I mean we sit here and we pass a bill and we set up  
1924 opt in and opt out procedures, and we have got Yahoo! and  
1925 Google, but what are you going to do with the bad actors and  
1926 how--is it possible that in addition to developing this  
1927 legislation so that all 50 states have one set because each  
1928 state now is developing a different one so there might be a  
1929 need for us at the federal level to develop it so you don't  
1930 have 50 states with 50 different privacies. So I guess my  
1931 question is twofold. What do we do with the bad actors and  
1932 is it a possibility that you could set up good housekeeping  
1933 seals that everybody would say I am safe with this site,  
1934 bingo, I can go into it and feel comfortable, and the bad  
1935 actors wouldn't get it and then you could differentiate and  
1936 say I am not going to fool with those.

1937 Mr. {Chester.} I think if you passed legislative  
1938 standards, right, that would be the base line. Everybody

1939 would know basically that they are protected. You now have a  
1940 changed FTC potentially and hopefully you are going to  
1941 reauthorize it soon. I mean the FTC has been hampered in  
1942 going after the bad actors. It has been constrained from  
1943 really looking as closely at this market as it should be and  
1944 hasn't had the resources, and it has also been in conflict.  
1945 There is now a new chairman there. There is a new director  
1946 of consumer protection. They really want to move on this  
1947 issue, and they could in fact be empowered to go after the  
1948 bad actors in a much more vigorous way. Of course, we don't  
1949 want to see state pre-emption consumer--

1950 Mr. {Stearns.} Now when I had hearings on this one of  
1951 the problems we found is that there was no reciprocity  
1952 between countries and you had the bad actors outside the  
1953 United States. And so part and parcel of this is to develop  
1954 legislation with other countries where you have reciprocity  
1955 so you can go after corruption and fraud and there is that  
1956 ability to do it. Otherwise, no one is going to comply with  
1957 the federal bill and they will be in another country.

1958 Mr. {Chester.} Well, I do think we are falling behind  
1959 the Europeans. They are going to have a better privacy  
1960 policy and build a whole new online commerce business that is  
1961 privacy friendly while we are lagging because they are  
1962 moving. The market is really being shaped, and this is

1963 something positive about the industry, we are creating this  
1964 global interactive market. Yes, there are European  
1965 companies, yes, there are Asian companies, but they in fact  
1966 have created the standard and that is terrific. What happens  
1967 here can shape the rest of the world. As for profiles, you  
1968 can see company after company says I have all this  
1969 information about an individual consumer. I would hope that  
1970 under the legislation that consumer could see all the  
1971 detailed information that is being collected about them.

1972 Mr. {Stearns.} Mr. Cleland.

1973 Mr. {Cleland.} Yeah. I think if Congress is serious  
1974 about this you need to focus on the concept of deterrence. I  
1975 mean if privacy violations or repeated violations are  
1976 important there needs to be a significant penalty of whatever  
1977 is appropriate but if legislation is passed and there is no  
1978 deterrent and there is also no significant way of getting  
1979 caught meaning independent audits of some type, it will not  
1980 have teeth. It won't be meaningful and it won't be  
1981 accountable. So if you are serious about this, you really  
1982 need to be thinking about how do you take unaccountability,  
1983 which is a problem across the Internet, not just with  
1984 privacy, and try and address that and create more  
1985 accountability. It is never going to be perfect but it is a  
1986 key.

1987           Mr. {Stearns.} Mr. Chairman, if you will give me a  
1988 little slack here, I just want to bring this last question,  
1989 which really is also what we as legislators are grappling  
1990 with, and that is the regulatory side versus the enforcement.  
1991 Mr. Cleland talked about the enforcement, and we have two  
1992 jurisdictions here. We have the FCC and the Federal Trade  
1993 Commission, so I would like to just start to my left and just  
1994 go down, and perhaps you could give us a feeling of how you  
1995 think this bill should come together in terms of jurisdiction  
1996 with the FCC and the Federal Trade Commission. Some people  
1997 think, well, the FCC could be the enforcer and the FTC could  
1998 be the regulator, but I would be curious if each one of you,  
1999 if you don't mind, take a few moments, Mr. Chairman.

2000           Mr. {Felten.} I would say this is closer to an FTC  
2001 issue. I think it is fundamentally a consumer protection  
2002 issue.

2003           Mr. {Stearns.} So both for regulatory and enforcement?

2004           Mr. {Felten.} Yes.

2005           Mr. {Stearns.} Okay.

2006           Ms. {Toth.} I would agree with Mr. Felten. We have  
2007 worked for a very long time with the Federal Trade Commission  
2008 on issues of consumer privacy online. We feel very  
2009 comfortable and believe that they are well versed to address  
2010 this issue.

2011 Mr. {Stearns.} Ms. Wong.

2012 Ms. {Wong.} I have to say I feel a little bit out of my  
2013 depth in terms of understanding the jurisdiction between  
2014 federal agencies, but like Anne we have worked for quite a  
2015 while with the FTC. My experience in watching them over the  
2016 last 10 years is they brought very effective enforcement  
2017 actions.

2018 Mr. {Kelly.} I would say as well that we worked  
2019 extensively with the FTC so far along this and they also have  
2020 a great deal of expertise in the competition area, which is  
2021 one of the things that is driving better technology  
2022 throughout the industry in terms of providing users more  
2023 transparency and more control over their data so the FTC has  
2024 developed a great deal of expertise in this area.

2025 Mr. {Chester.} I would like to see a joint task force  
2026 because in fact the FCC will have expertise at the network  
2027 level and particularly with cases with--inspection. There is  
2028 a real role here for the FCC but when it comes to the ad  
2029 itself and the consumer experience itself it is the FTC.

2030 Mr. {Stearns.} Yeah, because, you know, this is going  
2031 to develop once you get broadband more. You are going to see  
2032 voice over Internet. You are going to see everything over  
2033 the Internet. And so all communication is going to be  
2034 through that media and so I think the FCC has a part and

2035 parcel role.

2036 Mr. {Curran.} I think I would echo that, a nod to the  
2037 FTC, certainly in terms of our business model for cookie-  
2038 related activity. The FTC for over a decade with its  
2039 workshops on technology has been instrumental in raising  
2040 awareness of the policy and technical issues and very much  
2041 determinant in setting the direction for self-regulation.  
2042 And as for other business models and other regulatory  
2043 schemes, I wouldn't be able to speak to that.

2044 Mr. {Stearns.} Okay. Mr. Cleland.

2045 Mr. {Cleland.} FTC is the lead in close coordination  
2046 with the FCC. The only problem would be is if jurisdiction  
2047 got in the way of passing--if you want to pass legislation.  
2048 That would be the only tragedy.

2049 Mr. {Stearns.} Thank you.

2050 Mr. {Boucher.} Thank you very much, Mr. Stearns. The  
2051 gentleman from New York, Mr. Weiner, is recognized for 5  
2052 minutes.

2053 Mr. {Weiner.} Thank you. Could I ask perhaps for Ms.  
2054 Wong to talk a little bit about your experience developing  
2055 Chrome, which is your--what is it called?

2056 Ms. {Wong.} Browser.

2057 Mr. {Weiner.} Your browser. Wouldn't it be possible  
2058 through that vehicle so when you download it, your first page

2059 is tell us what information you would like to know about the  
2060 pages you are visiting and what information that you would  
2061 like to share, and maybe a collection of boxes you can check  
2062 or not check. It is similar to kind of what Facebook tries  
2063 to do although they don't do it right in your face. They  
2064 kind of have you can say this--that seems to be an even  
2065 better place to think about the true gateway to the  
2066 experience. If I wanted to do that through Chrome, would I  
2067 be able to do that in some way? I mean I know I can go and  
2068 erase the cookies and I can erase my browser history, but can  
2069 I do something like that?

2070 Ms. {Wong.} Right. Thank you for that question.

2071 Mr. {Weiner.} You are welcome.

2072 Ms. {Wong.} And I am at a little bit of a disadvantage  
2073 because I am not an engineer, just a lawyer, and our  
2074 engineers do amazing things. I think that--I don't know if  
2075 there is any limitation on what they can do. I know they are  
2076 working very hard to build privacy controls--

2077 Mr. {Weiner.} Well, perhaps if I could interrupt you  
2078 maybe Mr. Felten can tell me about the technology possible  
2079 here.

2080 Mr. {Felten.} Sure. The information flows that users  
2081 might be concerned about mostly happen not at the browser but  
2082 after the user has interacted with a web site or a content

2083 provider, so what that means is that technical controls would  
2084 exist mostly not in the browser but in the web sites  
2085 themselves.

2086         Mr. {Weiner.} Let me interrupt on that point. But if  
2087 you have a fairly finite number of browsers that most people  
2088 use, let us say for the purpose of this conversation it is 5.  
2089 That basically probably accounts for most of what people do.  
2090 And the browsers are themselves competitive with one another.  
2091 You can argue that the browser industry grew out of people's  
2092 dissatisfaction with Explorer. So why couldn't you say that  
2093 if you want your web site to come up when you traveling  
2094 through Firefox, you have to have certain of your own  
2095 information that you are giving us about what we can tell our  
2096 users. Isn't that kind of a technical solution, a solution  
2097 but a technical way to kind of serve as a gatekeeper for a  
2098 lot of web sites?

2099         Mr. {Felten.} Yes, and certainly there are things you  
2100 could do along those lines so that the browser could help the  
2101 user express their preferences and the browser could in a  
2102 technical way query a site and see what promises the site  
2103 makes about uses of data. There have been efforts to do this  
2104 in the past. There was a standardization effort called P3P,  
2105 the platform for privacy preferences, which defines such a  
2106 standard and for reasons that are subject to debate the

2107 standard didn't stick. It wasn't popular. Nonetheless, I  
2108 think this is a fruitful approach and I for one would be  
2109 happy if the companies got together and had a discussion  
2110 again about how to do this.

2111       Mr. {Weiner.} Mr. Kelly, tell us a little bit, if you  
2112 could, about your experiences in stepping on the toes of  
2113 people's privacy concerns. It seems to me that we to some  
2114 degree have three companies that have succeeded because  
2115 consumers with a lot of different choices have chosen to use  
2116 Google, chosen to use Yahoo, chosen in large numbers to go to  
2117 Facebook. Could it be that the reason they are choosing your  
2118 3 services in particular is that you are being self-selected  
2119 by an active consumer marketplace that thinks privacy works  
2120 on your sites? You just had an experience, I guess it is an  
2121 ongoing one, where you had kind of a conversation with your  
2122 members about privacy. How does it work differently on yours  
2123 than say--what search engine do you use when you are  
2124 searching the Internet personally?

2125       Mr. {Kelly.} It is usually Google.

2126       Mr. {Weiner.} How is your privacy experience as a  
2127 consumer of Google different than as a member of Facebook, is  
2128 it at all?

2129       Mr. {Kelly.} Well, I think that all three of these  
2130 sites have succeeded because they are providing great user

2131 experiences overall, and in come cases those are around  
2132 privacy, and because we have based a business on identity and  
2133 personal information and the effective sharing of that with  
2134 people who share a social context with you, we knew going in  
2135 that privacy was going to be a critical issue for us. And  
2136 our goal has been to build technologies that allow people to  
2137 make choices, so one of the things that has gotten lost in  
2138 the discussions of social networking is that friending,  
2139 whether your friend somebody or not and how you connect to  
2140 them is in and of itself a privacy setting. It determines  
2141 what information that you see on Facebook, and that has been  
2142 a great experience for us.

2143         When you look at Google or Yahoo! as a search engine,  
2144 they are looking to deliver a different experience there.  
2145 They are looking for you type in a word or two and get back  
2146 something that they think is the most relevant experience for  
2147 you to get you to the page that you need to go next. If you  
2148 use other services on those sites, they are providing  
2149 different experiences there. Our goal has been to build  
2150 technology that empowers users and lets them make their own  
2151 choices about how they share information. We have aimed to  
2152 extend that into the advertising realm as well.

2153         Mr. {Weiner.} Mr. Chester, I know you want to answer  
2154 this question, but let me build on it. You can go ahead and

2155 in my last few seconds you can answer, but I take you back to  
2156 1986 or even 1996. I don't even know when this phenomenon  
2157 all began. You could buy someone's credit report from three  
2158 different companies. You could probably find aggregators of  
2159 information that helped car dealers figure out who to send  
2160 their information to. You could probably scrub public  
2161 records to find out what kind of a home that they own, how  
2162 much taxes they paid. It seems to me that there have always  
2163 been resources that allowed someone to do 75 percent of what  
2164 you described in your testimony as the thing we are  
2165 protecting against. And we have acted here in Congress to  
2166 try to limit access to that information but to some degree  
2167 wouldn't you agree that consumers have pretty much now have a  
2168 lot of tools that inform their experience.

2169 I would argue without knowing, I bet you there are  
2170 places I can go on the Internet to even find little software  
2171 plug-ins I can probably download to let me know who is doing  
2172 what and what web sites are good or bad at protecting  
2173 information. So it is a two-part question. One is in a lot  
2174 of the stuff that you are most concerned about is going to be  
2175 out there whether you don't plug into the Internet at all,  
2176 and, secondly, isn't some degree the marketplace allowing--  
2177 aren't consumers allowing the winners to be the good privacy  
2178 companies? So why don't you take both those--

2179 Mr. {Chester.} Polls after polls after surveys  
2180 including the one that UC Berkeley just released about a week  
2181 ago, 10 days ago, say that the most users, most consumers,  
2182 have no idea about what is being collected, how it is being  
2183 used, how it really works. I honestly believe, and I think  
2184 this is going to come out as part of this debate, and,  
2185 frankly, that is why we need good privacy legislation because  
2186 it is going to undermine public confidence. People don't  
2187 really know what is going on inside Facebook and the third  
2188 party developers and all the data flowing out. They don't  
2189 know what Google is collecting across its various interests.  
2190 If they knew, they would, in fact, I think be more concerned,  
2191 so consumers don't know. The polls show that. This is a  
2192 whole different world here than it was back in 1996 or 1998  
2193 when we did the children's act.

2194 You are talking about the instantaneous merging of a  
2195 vast number of offline databases with online behavior minute  
2196 by minute that is adopted to an individual's actions and  
2197 reactions with various online environments including all the  
2198 personal information they put on their social networks. This  
2199 is a completely different system that has been created. And,  
2200 finally, you know, I have a 16-year-old. I look at this as  
2201 the world that will be here very soon. We will be buying our  
2202 mortgages on this mobile phone in the not too distance

2203 future. This is the dominant way we are going to be doing  
2204 business for the PC and the mobile phone. It is a whole  
2205 different world that has been created. On the one hand, we  
2206 should be proud of it. They created it for us. We just have  
2207 to make sure that consumers are protected.

2208 Mr. {Weiner.} Thank you, Mr. Chairman.

2209 Mr. {Boucher.} Thank you very much, Mr. Weiner. The  
2210 gentleman from Louisiana, Mr. Scalise, is recognized for 5  
2211 minutes.

2212 Mr. {Scalise.} Thank you, Mr. Chairman. When we talk  
2213 about opt in versus opt out, and I would imagine for business  
2214 model purposes opt out is the preference because if you force  
2215 somebody to opt in, I would think it would probably limit the  
2216 number of people that would want their data to be collected  
2217 on the front end, but if they do go through the process of  
2218 opting out, are they actually stopping their personal data  
2219 from being collected or are they just not getting the  
2220 targeted advertising. If Ms. Toth could start.

2221 Ms. {Toth.} When a user is opting out for us that is an  
2222 opt out of not collection but of use of the information, but  
2223 I also want to be careful about the use of the term personal  
2224 information because very often what is being conveyed to us  
2225 is information that is specific only to a browser that is  
2226 used to customize advertising. But even that level is what

2227 the user is able to opt out of in terms of that data being  
2228 used.

2229 Mr. {Scalise.} But in different levels, of course. If  
2230 you are just going on to a browser, and I think Ms. Wong  
2231 talked about that, if I just go on to Google and do a search  
2232 there is different information, maybe just my IP address, but  
2233 then if I actually use Yahoo! for an e-mail account then  
2234 clearly I am going to be giving you a whole lot more  
2235 information and then you will have access to that, and if I  
2236 choose to opt out of that what am I opting out of there? Are  
2237 you not going to be collecting that data anymore or are you  
2238 just not going to be giving the targeted advertising?

2239 Ms. {Toth.} The way that we do it at Yahoo! is that  
2240 when a user opts out, we are no longer showing them targeted  
2241 advertising, and we are not using their information in that  
2242 particular way. Yahoo! offers a wide array of products and  
2243 services, as you mentioned, e-mail, search, a wide array of  
2244 different--

2245 Mr. {Scalise.} Maybe social network services.

2246 Ms. {Toth.} Social networking, exactly. So when a user  
2247 opt out, we opt them out of the delivery of targeted  
2248 advertising, but we also recognize that users may not want us  
2249 to have that much information about them, so we take great  
2250 pains to de-identify the data as soon as we can. We spent

2251 over a year looking at every single product, every single  
2252 data system at Yahoo! to really try to minimize the amount of  
2253 time that we hold data about users.

2254 Mr. {Scalise.} Right. I know we got limited time, so,  
2255 Ms. Wong, and then Mr. Kelly.

2256 Ms. {Wong.} Sure. I think it is roughly the same  
2257 answer that I gave earlier, which is we really collect very  
2258 little data from users when they are searching the IP address  
2259 and the cookie, and the opt out for our interest-based  
2260 advertising is an opt out for those targeted ads, and that it  
2261 means is that the cookie you are getting is not uniquely  
2262 identified. It just drops the query that you send us or the  
2263 data that we have gotten into a bucket of all opt out  
2264 cookies.

2265 Mr. {Kelly.} Because our service is based on sharing  
2266 personal information with others, we inevitably end up  
2267 collecting a great deal of personal information so that we  
2268 can effectively share it with others, and actually ask people  
2269 to retain people's photo albums for them, which they usually  
2270 expect to be retained indefinitely. In certain  
2271 circumstances, and particularly in our advertising products,  
2272 where we are innovating and where people may not be used to a  
2273 presentation in a particular way, we have allowed for opt  
2274 outs in those instances because we think it empowers users.

2275 It allows them to say I am not comfortable with this at this  
2276 point, but they can reconsider that at a later time. Our  
2277 goal overall, and I think the goal of this committee and any  
2278 legislation it considers and any enhancement of regulatory  
2279 authority should be to make sure that consumers have real  
2280 power to make those choices. We have tried to embody that in  
2281 technology as much as we can, and you are here trying to  
2282 embody it in law and trying to encourage the regulatory  
2283 agencies to continue to meet their burdens and their  
2284 obligations under existing law.

2285 Mr. {Scalise.} And I apologize to interrupt. I have  
2286 only got a minute left. There is something else I want to  
2287 ask especially as it relates to the e-mail services. And  
2288 both for Yahoo! and Google, if you can answer this. If a  
2289 user of Yahoo! or Google or any other e-mail service decides  
2290 that they want to opt in or they don't opt out to all of  
2291 those agreements, and you can collect whatever information  
2292 you want from them, but let us say they then send me, and I  
2293 don't have that service, and they send me an e-mail. I  
2294 didn't agree to any of those issues. Do you read e-mails  
2295 from people that are a Yahoo! or Google e-mail subscriber?  
2296 Do you read through those e-mails to gather information in  
2297 any way?

2298 Ms. {Toth.} Yahoo! does not scan the content of e-mail

2299 communications in order to share targeted advertising.

2300 Mr. {Scalise.} Or for any other purposes?

2301 Ms. {Toth.} We don't--well, there are only some  
2302 purposes for--there is a process that actually removes  
2303 viruses from e-mail that is an automated process but we don't  
2304 use the content--

2305 Mr. {Scalise.} For advertising. Ms. Wong.

2306 Ms. {Wong.} Yes. We are using that same technology  
2307 that scans for viruses and also scans for spam. It is  
2308 basically technology that looks for pattern in text, and we  
2309 use that not only for the spam blocking and viruses but also  
2310 to serve ads within the Gmail user's experience so  
2311 importantly like the--

2312 Mr. {Scalise.} So if two people are exchanging an e-  
2313 mail about a sporting event and they are talking about going  
2314 to the game and then maybe they are going to want to go out  
2315 for a drink afterwards, could they then maybe expect to get  
2316 an advertisement about which different bars are offering  
2317 specials after the game?

2318 Ms. {Wong.} They won't get an e-mail with an  
2319 advertisement but only the Gmail user will be able to see ads  
2320 that shows up just like they show up on the side of our  
2321 search results that are key to specific words--they are key  
2322 words just as if you typed them into our browser that are

2323 calling from our repository of millions of ads to deliver an  
2324 ad that is targeted to the content that you are reading.

2325       Mr. {Scalise.} So if that was a two-way conversation,  
2326 one was the Gmail subscriber who agreed to or didn't opt out  
2327 of the privacy but the other person in that conversation was  
2328 not a Gmail user, clearly not someone who opted in or opted  
2329 out, would any part--because in an e-mail thread they could  
2330 have had maybe four or five replies and you got a long thread  
2331 built up, and it is not just going to be the Gmail's  
2332 information that is going to be there. The person who is a  
2333 non Gmail user is also going to be included in that thread.  
2334 Would any of that information be read?

2335       Ms. {Wong.} The non Gmail user will not have any ads  
2336 targeted to them at all.

2337       Mr. {Scalise.} Is any of their data collected from that  
2338 conversation?

2339       Ms. {Wong.} Their data sits in the recipient's, the  
2340 Gmail recipient's e-mail archive.

2341       Mr. {Scalise.} So if you have got algorithms that went  
2342 through that Gmail e-mail, then when you were reading things  
2343 in that e-mail some of the things that you were reading--

2344       Ms. {Wong.} Were scanned.

2345       Mr. {Scalise.} --would have been part of the thread of  
2346 a non Gmail subscriber.

2347 Ms. {Wong.} That is right.

2348 Mr. {Scalise.} How does your privacy policy handle that  
2349 because that person clearly has absolutely no knowledge of  
2350 you reading their e-mail, they surely didn't agree to it, and  
2351 they didn't have the ability to opt out, so how is that  
2352 handled?

2353 Ms. {Wong.} Yeah, just to be really clear. There are  
2354 no humans reading e-mail at our company.

2355 Mr. {Scalise.} But even if it is a software algorithm  
2356 that is trained to go through and look for key words or key  
2357 information, their e-mail address, of course, is going to be  
2358 in there, so you would be able to know who that person is at  
2359 least from their e-mail address, but also you would be able  
2360 to have access to the information. Do you have anything in  
2361 those algorithms that prevents that information that is not  
2362 Gmail related to be read from a person who didn't agree or  
2363 have the ability to opt out of the privacy--

2364 Ms. {Wong.} It would have to be that the user decided  
2365 that they did not want to receive that e-mail from the person  
2366 who sent it to them so this is fully in control of the Gmail  
2367 account holder, and they can refuse to receive e-mails from  
2368 certain people.

2369 Mr. {Scalise.} So you would be putting the burden now  
2370 of privacy collection on a user of Gmail, someone who

2371 actually has a Gmail account?

2372 Ms. {Wong.} So our user--

2373 Mr. {Scalise.} But your user actually knew what your  
2374 policy was and could today right now go online as you showed,  
2375 you got many opportunities for your users to opt out.

2376 Ms. {Wong.} That is right.

2377 Mr. {Scalise.} The person who is the third party who is  
2378 the non Gmail subscriber who is part of that thread does not  
2379 have that same access so how can you put the burden on the  
2380 person who sent the e-mail?

2381 Ms. {Wong.} No, no, no. The person who sent the e-mail  
2382 has--they have sent their e-mail to their friend. That user  
2383 is not going to get any ad targeted to them. We are not  
2384 going to have any information about that user at all.

2385 Mr. {Scalise.} Is any of their information read?

2386 Ms. {Wong.} Except for the fact that we hold their  
2387 e-mail because we are the e-mail service provider for the  
2388 Gmail account holder, which is the same as any other web mail  
2389 service.

2390 Mr. {Scalise.} I guess the real question is how is that  
2391 person--the Gmail subscriber clearly has the ability to  
2392 protect their privacy, to opt out if they so choose. Maybe  
2393 some of their data is still collected but they could still  
2394 opt out but the third party that they sent the e-mail to who

2395 then replied back to them who is contained in that thread  
2396 doesn't have that same ability but their data is subject to  
2397 being searched in the same way, so how--

2398 Ms. {Wong.} That is true, but that occurs with every  
2399 web mail service because every web mail service--

2400 Mr. {Scalise.} But Yahoo! just said that they don't do  
2401 the same thing.

2402 Ms. {Wong.} --scans their e-mail.

2403 Mr. {Scalise.} I will ask Ms. Toth if that--

2404 Ms. {Wong.} Every web mail service scans their e-mail  
2405 for spam, scans it for viruses. It is the same process.

2406 Mr. {Scalise.} But also for targeted advertising, I  
2407 think you said you all do scan it for targeted  
2408 advertisements. Ms. Toth said they do not.

2409 Ms. {Toth.} We do not target. We don't--

2410 Mr. {Scalise.} And I guess in the case where they are  
2411 scanning it for other services that would be maybe sold to a  
2412 third party, how does the person protect their privacy when  
2413 they never had the same opportunity to opt out that the  
2414 original Gmail subscriber who sent the e-mail was able to  
2415 have the same access?

2416 Ms. {Wong.} To be very clear, no user's information is  
2417 sold to any third party. No information about the sender of  
2418 an e-mail to a Gmail account is--

2419 Mr. {Scalise.} But if--

2420 Mr. {Boucher.} Mr. Scalise, you are now past 10 minutes  
2421 of time. We are going to wrap up.

2422 Mr. {Scalise.} If I can get that in writing maybe the  
2423 answer to that. Thank you.

2424 Mr. {Boucher.} That is fine. If any of the witnesses  
2425 would like to respond to that last question in writing, that  
2426 would be highly appropriate. The gentleman from Vermont is  
2427 recognized next, Mr. Welch, for 5 minutes.

2428 Mr. {Welch.} Thank you, Mr. Chairman. Thank you. I  
2429 want to join my colleagues in apologizing for the delay and  
2430 appreciation for your patience although I think I might  
2431 rather have your job today than ours. Ms. Wong, in your  
2432 written testimony you noted that the committee should  
2433 continue our efforts to explore the privacy issues. This is  
2434 obviously an incredibly difficult issue, both because of the  
2435 complexity of making this work and assuring confidence to  
2436 users and because of basic questions about what should be  
2437 private and what isn't. I am asking that you expand on that  
2438 and what ongoing efforts is Google making about the merging  
2439 of online and offline data and the issues that are created as  
2440 a result of that. I would start by asking you if you would  
2441 comment on that and probably ask a few others as well.

2442 Ms. {Wong.} Sure. And I actually think this is a

2443 multi-dimensional question. I think absolutely there is an  
2444 obligation on industry to do the right thing because the  
2445 trust of our users is incredibly important. I also think  
2446 that there is a role for groups like Mr. Curran's group, the  
2447 self-regulatory groups, which continue having us innovate on  
2448 best practices. I think the best thing that has happened in  
2449 the last few years that all of the major Internet companies  
2450 are competing to create better privacy technologies, and that  
2451 is really phenomenal. There is also a role for government  
2452 because to be very clear, there are bad actors, and so there  
2453 is a role for oversight into the range of players on  
2454 ecosystem and the conduct that they engage in.

2455         And the thing that I think is most important, and the  
2456 reason it should apply to both online and offline is that the  
2457 companies that you have here all face our users, are all  
2458 invested in deepening the relationship with our users. There  
2459 are companies that do not face the public that are behind it  
2460 and that need more oversight because nobody knows what they  
2461 do with their data.

2462         Mr. {Welch.} Mr. Curran, do you want to comment or  
2463 anything else to add? Kudo to you for the role that you  
2464 play.

2465         Mr. {Curran.} I would simply say I think we have an  
2466 obligation to tell you about our successes and areas of

2467 improvement as self-regulatory organizations as it relates  
2468 to--and also to, I think, work with you to explain the  
2469 somewhat complicated technologies that go around the  
2470 different business models. I don't believe that--I have  
2471 diverse memberships that we are not in the position of having  
2472 a legislative view at this time, but we are very much  
2473 committed to educating the committee on the technologies, and  
2474 I think today's hearing has been very helpful on that in  
2475 terms of in effect helping you discern the exact technical  
2476 infrastructure that goes into all of this online advertising.

2477       Mr. {Welch.} Well, let me come back to Mr. Kelly. The  
2478 Congress is never going to be able, obviously, to address  
2479 technical issues. It is not our competence. It is not our  
2480 job. It is not what we should do. What specific things in  
2481 terms of policies, I will ask you, Mr. Kelly, would you be  
2482 recommending that Congress do in order to protect privacy,  
2483 which is our proper concern, but do it in a way that doesn't  
2484 strangle innovation?

2485       Mr. {Kelly.} And that is a critical role that you do  
2486 have is to protect the innovation in American technology and  
2487 how we have been able to lead the world in this area. But,  
2488 obviously, protecting the privacy of American consumers is  
2489 critical to us and to other companies in the technology  
2490 industry but not everyone. And so there are many actors out

2491 there who are tasked and see their role as gathering data and  
2492 building personal profiles of people with no notice, no  
2493 consent, no control. I think that Congress' regulatory  
2494 action should be largely directed there. We have a set of  
2495 existing and extensive regulations, and we have talked  
2496 tonight about our work with the FTC as a technology industry  
2497 in this area where there are bans against deceptive practices  
2498 and other activities, but still there are many technology  
2499 companies out there, whether they be spyware vendors, whether  
2500 they be sort of just surreptitious collectors and aggregators  
2501 of personal data that deserve the attention of this  
2502 committee, the Congress, and existing regulators.

2503 Mr. {Welch.} Thank you. My time is almost expired and  
2504 I yield the balance of my time.

2505 Mr. {Cleland.} Could I answer?

2506 Mr. {Welch.} It is up to the chairman. I think I am  
2507 almost out of time.

2508 Mr. {Boucher.} Yeah, that is fine. Go ahead, Mr.  
2509 Cleland.

2510 Mr. {Cleland.} Yes. I think the key concept of what  
2511 you are looking for that the FTC and others should build on  
2512 is longstanding, fair representation law. We obviously have  
2513 a huge gap. Jeff mentioned a lot of the polls out there.  
2514 Consumer don't have a clue about all the stuff that is being

2515 collected on them, not a clue. And so if you believe in fair  
2516 representation and you take the facts of all the people that  
2517 have been dealt with on the Internet and they don't know what  
2518 is going on, there is a serious breakdown in fair  
2519 representation.

2520 Mr. {Chester.} Do you think I could add something?

2521 Mr. {Boucher.} Mr. Chester, please.

2522 Mr. {Chester.} Just very briefly. All the companies  
2523 here, including the members of NAI, as far as I can see, are  
2524 increasing the amount of data they are collecting on  
2525 consumers. It is not that there is a question of best  
2526 practices. They are building and expanding the data  
2527 collection. That is the nature of the business. That is the  
2528 nature of the online advertising system to build out these  
2529 very sophisticated approaches. Therefore, you need to have  
2530 rules, you need to bring PIA up to date, because you don't  
2531 need to know your name anymore to know who you are. You need  
2532 to protect sensitive data and you have to have the FTC be a  
2533 better watchdog.

2534 Mr. {Boucher.} With that, Mr. Welch, your time has  
2535 expired. And let me say thank you once again to our  
2536 witnesses for what truly has been an informative session.  
2537 Long delayed, but well worth our time talking to you, and we  
2538 thank you very much for taking your time, all day, in fact,

2539 to talk to us. I have clearance for unanimous consent from  
2540 the minority to place in the record a letter to the  
2541 subcommittee, the joint subcommittees actually, from the  
2542 Federal Trade Commission, concerning the subject of today's  
2543 hearing, a letter from Data Foundry, a data company based in  
2544 Austin, Texas. Without objection, those will be made a part  
2545 of the record.

2546 [The information follows:]

2547 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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2548           Mr. {Boucher.} And without objection, the record of  
2549 this proceeding will be kept open for a period of 3 weeks so  
2550 that other members of the subcommittee can submit to our  
2551 witnesses questions in writing. And as you receive those  
2552 questions from the members, if you could respond to them  
2553 promptly, that would be much appreciated. Thanks again to  
2554 you for an excellent hearing. This hearing stands adjourned.

2555           [Whereupon, at 8:20 p.m., the subcommittees were  
2556 adjourned.]