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1 {York Stenographic Services, Inc.}  
2 HIF323.170  
3 JOINT HEARING ON EXPLORING THE OFFLINE AND ONLINE COLLECTION  
4 AND USE OF CONSUMER INFORMATION  
5 THURSDAY, NOVEMBER 19, 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 12:23 p.m.,  
13 in Room 2123 of the Rayburn House Office Building, Hon. Bobby  
14 Rush [Chairman of the Subcommittee on Commerce, Trade, and  
15 Consumer Protection] presiding.

16 Members present from Subcommittee on Commerce, Trade,  
17 and Consumer Protection: Representatives Rush, Schakowsky,  
18 Sarbanes, Green, Barrow, Matsui, Space, Radanovich, and

19 Scalise.

20           Members present from Subcommittee on Communications,  
21 Technology, and the Internet: Representatives Boucher,  
22 Markey, Doyle, Inslee, Murphy, McNerney, Stearns, Shimkus,  
23 and Blackburn.

24           Staff Present: Michelle Ash, Chief Counsel; Marc  
25 Groman, FTC Detailee; Timothy Robinson, Counsel; Amy Levine,  
26 Counsel; Greg Guice, FCC Detailee; Sarah Fisher, Special  
27 Assistant; .Will Cusey, Special Assistant; Theresa Cederoth,  
28 Intern; Pat Delgado, Rep. Waxman's Chief of Staff; Brian  
29 McCullough, Senior Professional Staff; Shannon Weinberg,  
30 Counsel; Will Carty, Professional Staff; Amy Bender, FCC  
31 Detailee; and Sam Skywalker Costello, Legislative Analyst.

|  
32           Mr. {Rush.} The joint committee will come to order.

33           This is a joint subcommittee hearing on Commerce, Trade,  
34 and Consumer Protection, and the Commerce, Technology, and  
35 Internet Subcommittee.

36           The subject matter for this hearing is entitled  
37 ``Exploring the Offline and Online Collection and Use of  
38 Consumer Information.'' I am privileged to chair the  
39 Subcommittee on Commerce, Trade, and Consumer Protection, and  
40 my friend and colleague, Mr. Boucher, who is the chairman of  
41 the Communications, Technology, and Internet Subcommittee of  
42 the Committee on Energy and Commerce.

43           It is my honor to chair the first part of this hearing,  
44 and this hearing will be chaired subsequently by Chairman  
45 Boucher. The chair recognizes himself now for 5 minutes, for  
46 the privileges and the purposes of an opening statement.

47           The collection and use of personal information of  
48 customers and consumers are threads from the same knitting  
49 needle, sewn into the fabric of American commerce and  
50 competition near the start of the Twentieth Century.

51 Accordingly, these tools and methods predate their more  
52 powerful, precise, and predictive counterpart in the online  
53 realm by more than 100 years.

54           But just because we have something that has been around

55 for a long time does not mean we understand as much about it  
56 as we should. That is why I am delighted about today's  
57 hearing. It is the fourth in a series of hearings our two  
58 subcommittees have held on the subject of privacy.

59 At our hearings and in our meetings, consumers and their  
60 advocates, industry, and leading commentators have shared  
61 with us extensively why this all matters, how entrepreneurs  
62 and businesses go about protecting consumer privacy, and why  
63 collecting personal information about individual consumers  
64 improves the chances their businesses will have to succeed.  
65 While preparing for these hearings, we have been surprised at  
66 how little is really known about how businesses go about  
67 ensuring that individual privacy is protected.

68 Consumers are telling us they want to know more about  
69 how their information is being protected. As their  
70 representatives and our consumers ourselves, we hear them  
71 loud and clear. They should be and are concerned, even to  
72 the point of anger, when they learn that they have been  
73 placed on consumer lists identifying themselves as affluent  
74 Jews or Blacks, as pro-choice or pro-life, as donors, as  
75 members of a same-sex couple relationship, or as being  
76 addicted to gambling, addicted to sex, or addicted to  
77 tobacco.

78 Indeed, on my way back home to Chicago to celebrate the

79 Thanksgiving holidays, I could take public transportation to  
80 the airport, and by using a SmartCard and a frequent flyer  
81 card, records of my whereabouts, and when and to where I was  
82 commuting and flying are created. To buy my holiday turkey,  
83 I may use my grocery rewards card, which would swipe into a  
84 system of databases what is in my cart, when and where I  
85 shopped, how much I paid, among the other data points that  
86 were being collected. And these are just several examples of  
87 the type of consumer lists and data points that are generated  
88 and populated into databases, 24 hours a day, 365 days of  
89 every year.

90         But how much do we know about the businesses that that  
91 make it a business of obtaining and selling or sharing  
92 ``offline'' information and customer lists with affiliated  
93 and unaffiliated businesses. How much do we know about their  
94 marketing practices and product development strategies to  
95 persuade buyers and individuals who will pay considerable  
96 amounts of money for that information? How much do we really  
97 know about what these buys and individuals do with that  
98 information, including reselling the information downstream  
99 to other buyers and bidders for that information?

100         I am interested in hearing everyone's perspectives about  
101 the current legal and regulatory structure that exists to  
102 protect this information. Should the source of this

103 information, whether it is taken ``offline'' from a warranty  
104 registration card, or ``online,'' from a social or health  
105 networking site be treated differently, when it reveals  
106 fundamentally the same personal information about individual  
107 consumers? And by treating the information differently, with  
108 a heightened duty on businesses to protect ``online  
109 sources,'' for example, are we setting perverse incentives  
110 and conditions for regulatory arbitrage and avoidance?

111 Let me be clear. My end goal is to work with members of  
112 this subcommittee and members of this committee to introduce  
113 privacy legislation, which protects consumers from privacy-  
114 related harms, yet doesn't stifle responsible entrepreneurs  
115 and businesspeople from developing models and instituting  
116 successful business and marketing plans that are, indeed,  
117 respectful of consumer privacy.

118 Keeping privacy protections that belong in the back  
119 office from tumbling into the crawl spaces under the office  
120 will be a big part of our challenge. In whatever bill we  
121 draft, we must to work to ensure that the accelerating  
122 convergence of ``offline'' and ``online'' collection and does  
123 not outpace the demands of consumers for dignity and for  
124 discipline and for our decency, in our dawning digital  
125 economy and markets.

126 I yield back the balance of my time.

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

128 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
129           Mr. {Rush.} I recognize the ranking member of this  
130 subcommittee, Mr. Radanovich, for 5 minutes for the purposes  
131 of opening statements.

132           Mr. {Radanovich.} Thank you, Chairman Rush, and I want  
133 to thank you for holding this second hearing on the topic of  
134 privacy.

135           And we understand, or have heard rumors of legislation  
136 coming in the next few weeks, and I look forward to that, and  
137 working with you on legislation to improve rights of privacy.

138           As I have stated before, I believe an individual's  
139 information is their own personal property. We, as  
140 consumers, should know what information is gathered about us,  
141 where and how it is stored and protected, and who has access  
142 to that stored information. And most importantly, for the  
143 context of this hearing, with whom and for what purposes is  
144 that information shared?

145           But the fact of the matter is that information  
146 collection, aggregation, and sharing predates the Internet by  
147 decades, and yet, most of us don't know the details of who  
148 has the information, what information they have about us, and  
149 where they obtained it. The most critical point of concern  
150 for me is not necessarily the aggregation of this data  
151 offline, but when that comparatively limited offline data is

152 combined with more comprehensive data collected online. I  
153 believe that that is the most important development, because  
154 it will continue to grow in significance, as e-commerce and  
155 mobile commerce expand.

156         The flipside of my concern for privacy and the right to  
157 control my information is the recognition that this  
158 information sharing is good for business, and I certainly do  
159 feel that I have, or do not feel that I have been harmed  
160 because a retail catalog appeared on my mail. Maybe the  
161 tenth one in one day, yes, I have been harmed, but. However,  
162 we all know that collected information can, in certain  
163 contexts, be used by criminals that have, if that information  
164 is not respected and protected.

165         In general, I believe the free market can and should be  
166 allowed to solve these types of issues, as consumers become  
167 aware and demand certain protections, practices, and control  
168 options, industry will respond in order to maintain those  
169 vital relationships.

170         Thankfully, the best actors do take privacy seriously,  
171 and they do provide options for consumers to block the  
172 sharing of their information for marketing purposes. The  
173 problem for Congress is similar to what we face on many  
174 issues, and that is how to address the bad actors without  
175 overburdening the good by depressing or even eliminating

176 productive and beneficial commercial activity. That is the  
177 balance for which we should strive, and the approach that I  
178 will continue to support.

179 I look forward to hearing from our witnesses today,  
180 particularly our small business representative. I would like  
181 to know exactly what information you collect, with whom you  
182 share it, and how you and your partners use that information.  
183 I would also like to hear all of your thoughts about how this  
184 can be addressed through industry self-regulation, and what,  
185 if any steps Congress may need to consider to ensure personal  
186 information and the use of that information are adequately  
187 protected and treated properly.

188 Finally, I would like to know your thoughts on how the  
189 varying approaches to potential regulation of sharing we have  
190 previously discussed in this committee, such as first party,  
191 third party approach, or a primary personal approach would  
192 impact the world of small business. We have seen, in other  
193 contexts, the consequences of acting too quickly without full  
194 investigation of potential consequences. In this area that  
195 is so important to so many people, I want to make sure that  
196 any policy decisions are based upon the fullest information  
197 available, and will be fair to all businesses, regardless of  
198 their size and corporate structure.

199 We all want to protect privacy and prevent harm, but

200 Congress should not seek to solve the issue by choosing  
201 winners and losers.

202 Thank you very much, Mr. Chairman, and I thank you,  
203 witnesses, for your time and your input today, and yield back  
204 the balance of my time.

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

206 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
207           Mr. {Rush.} The chair thanks the gentleman, the vice  
208 chair, or the ranking member, rather.

209           The chair now recognizes the gentleman from  
210 Massachusetts, Mr. Markey, for 5 minutes, for the purposes of  
211 opening statement.

212           Mr. {Markey.} Thank you, Mr. Chairman, very much, and  
213 thank you so much for holding this critically important  
214 hearing.

215           Shakespeare, in Othello, said: ``Who steals my purse  
216 steals trash. 'tis something, nothing; 'Twas mine, 'tis his,  
217 and has been slave to thousands; but he that filches from me  
218 my good name robs me of that which not enriches him but makes  
219 me poor indeed.''

220           Now, as we were growing up, our doctors, our bankers,  
221 the nurses, they were privacy keepers. We knew that our  
222 medical record was locked up in that closet with the nurse,  
223 with the key to open it up to go in and get the records, and  
224 it wasn't going to be shared with the neighborhood. The same  
225 thing is true for all of our records.

226           But we have moved from an era now of privacy keepers to  
227 one of privacy peepers, and data mining reapers, who want to  
228 turn our information into products. And what is the product?  
229 The product is our records, our privacy, our families'

230 history. And as online and wireless merge, it becomes all  
231 the more possible to take this world, and to compromise the  
232 privacy of Americans.

233         And so, this really goes to the heart of who we are. We  
234 wouldn't let the government do this. We wouldn't let the  
235 government gather all this information, or make it a product.  
236 So, we have to protect against businesses that think that we  
237 are all products, that our families are all products. The  
238 members of our families are all products, because this  
239 information is invaluable as a product to other people.

240         But to us, it goes right to the essence of our families  
241 and who we are, and what privacy we should have a right to  
242 expect. And so, as we are moving forward, we have to create  
243 the rules. The new technologies themselves have no  
244 personality at all. They are just technologies. They only  
245 get their personality as we, we animate them with the values  
246 that we want them to serve.

247         And so, for my part, I think that the old values served  
248 us very well, and the new technologies should be animated  
249 with those old values. That is the key to this discussion.  
250 It is not oh, Congress can't keep up with new technology.  
251 Oh, we can keep up with it. We know what is going on. The  
252 question is, do we have the insight and the courage to add  
253 those old values, so that families aren't compromised by

254 businesses that want to make a product out of people's  
255 business.

256         When we were doing the health IT bill in February,  
257 adding that \$20 billion, I authored the language that ensured  
258 that the information that was now going to be transmitted was  
259 indecipherable to unauthorized users. Because yes, we want  
260 to get the benefit of new health IT information, because that  
261 can help patients, but we don't want that information to now  
262 be compromised, as it is taken out of the file and put  
263 online. We want the benefits to flow to the patients, but  
264 not for the information to be turned into a product, a  
265 profile, that can then have everyone in town or everyone  
266 across the country knowing who had anorexia, prostate cancer,  
267 breast cancer, in your family.

268         If you want to tell someone about it, you should be able  
269 to do it, but if you don't want to tell anyone about it, that  
270 should be your right, too. And there is many people who  
271 don't mind people finding out, but there is many others who  
272 aren't going to tell anyone else in their family that they  
273 have a secret. That should be their right. That shouldn't  
274 be a decision made by a business, that is now just widely  
275 disseminated because there might be more products that they  
276 can help you with, to gain access to. They should ask you if  
277 you want to have access to it, then that information can be

278 sent out there.

279           So, this brave new world is really no different than the  
280 discussion that our grandparents and our parents had to have  
281 about the privacy they expected, and I think that the same  
282 values exist, the technologies should work for families, and  
283 they should have the right to say no. They should have the  
284 knowledge and information that is being gathered about them.  
285 They should have the notice that the information is going to  
286 be used for other purposes, other than that which was  
287 originally intended, and they should have the right to say  
288 no. No, well, I want the benefit of the technology, but I  
289 don't want it turned into a product. I don't want my  
290 children's, my mother and father's information now as some  
291 kind of product that is out there.

292           So, thank you, Mr. Chairman. We could not have a more  
293 important subject. I yield back the balance of my time.

294           I yield back the balance of my time.

295           [The prepared statement of Mr. Markey follows:]

296 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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297           Mr. {Rush.} The chair thanks the chairman of the  
298 Subcommittee on Energy. Now, the chair recognizes the  
299 ranking member of the Subcommittee on Energy, Mr. Stearns,  
300 for 5 minutes, for the purposes of opening statement.

301           Mr. {Stearns.} Thank you, Mr. Chairman, and let me  
302 commend you also, you and Mr. Boucher, for having this  
303 hearing. I thank the witnesses for coming. We look forward  
304 to your testimony.

305           We have had, I think, back in June, we had a big  
306 discussion on behavioral advertising, and how to broadly  
307 examine how companies are using consumer Internet behavior to  
308 tailor online advertising, to simply identify the ways this  
309 kind of targeted advertising affects the consumer. How does  
310 he or she benefit from this, and I think most of the feelings  
311 were that the consumer does benefit from this.

312           So, in a sense, this committee is here to hear more  
313 about the subject, but also, with an understanding to do no  
314 harm. Only the consumer knows how he or she feels about the  
315 information being collected, parties that are doing the  
316 collecting, and of course, the purpose for which the  
317 information is being collected for.

318           The question becomes just how much influence and how  
319 much regulation should Congress be involved with. I don't

320 think Congress cannot and should not make the decision for  
321 the consumer. The consumer should make that decision for  
322 themselves.

323         We, as members of this committee, certainly can play a  
324 proactive role in ensuring that consumers have this adequate  
325 information, and full range of tools at their disposal, in  
326 order to simply make this informed choice, whether it is opt-  
327 in or opt-out.

328         Companies that collect information about consumers in  
329 both an offline and online manner obviously had to be good  
330 stewards of the information, and should seek to protect that  
331 information where it is appropriate. Additionally, all  
332 companies, whether they be data brokers, major retail  
333 companies, or even small businesses, should operate in a  
334 transparent manner and fair manner, when it comes to the  
335 information they collect about consumers, or consumers, or  
336 how that information is subsequently being used.

337         The real transparency, I guess, is a question of how  
338 robust a disclosure and notice to the consumer is required in  
339 their privacy policy. They obviously should be presented in  
340 a clear, conspicuous manner, so that the consumer knows,  
341 should be indicating what is being collected, the ways the  
342 information is being used, and third, the ways the consumer  
343 can prevent the collection of the information if they don't

344 want to do it.

345           This is a very significant challenge. We haven't had  
346 many hearings on privacy, and understanding the  
347 constitutional issues, as well as understanding the role of  
348 the Federal Trade Commission. When I was chairing the  
349 Commerce, Trade, and Consumer Protection Committee, I  
350 realized that there is, people would have different outlooks  
351 on the opt-in and opt-out provision.

352           And I come to believe that for the most part, that if we  
353 get into too much of the weeds here, that we are going to  
354 impede the Internet, and make it more difficult for people to  
355 collect information, when it is probably not necessary.

356           In fact, at one time, the Federal Trade Commission and I  
357 talked about a Good Housekeeping Seal, that would be provided  
358 by private companies, that in a sense, would be a seal of  
359 approval, so that people, when they went on a website, would  
360 realize this already complies with a Good Housekeeping Seal  
361 that has been approved by the Federal Trade Commission, so  
362 that they would have the confidence right there, without  
363 going through the rigmarole of looking at an opt-in and opt-  
364 out provision, and reading the detailed fine print in a  
365 privacy policy.

366           The small businesses of this country create all of the  
367 jobs, and there is a lot of Internet companies that are

368 starting up, and obviously, we wouldn't want to impede their  
369 ability to function. So, this Internet is such a powerful  
370 means of communication, putting in a significant privacy  
371 policy is very important, and has the great effect of either  
372 helping, enhancing, or deterring, shall we say, the purchase  
373 of products, the use of it.

374 So, I think this is a very important hearing, to hear  
375 from the people that are most involved, and I look forward to  
376 hearing from them, and hearing some of the pitfalls of sort  
377 of what we have as a draft bill that Mr. Boucher and Mr. Rush  
378 and I, and Mr.--others have put together, and so, we are  
379 looking forward to, perhaps, after this hearing, to get this  
380 draft bill out, so that we can hear from you folks, to see  
381 what you think of it. And then, we can move forward.

382 And with that, Mr. Chairman, I yield back.

383 I yield back the balance of my time.

384 [The prepared statement of Mr. Markey follows:]

385 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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386           Mr. {Rush.} And the chair recognizes Mr. Green for 2  
387 minutes, for the purposes of opening statement.

388           Mr. {Green.} Thank you, Mr. Chairman, both you and  
389 Chairman Boucher, thank you for holding this hearing, to  
390 continue our examination of consumer data collection and use,  
391 and the security and privacy implications it has.

392           The issue in discussion, of online versus offline data  
393 collection, is an important one, because the distinction has  
394 blurred so much over the past decade. The ability to easily  
395 aggregate and share information over the Internet has proved  
396 tremendous benefits to our society and our economy, and the  
397 collection of consumer information can provide tremendous  
398 benefits to small and upstart businesses, by allowing them to  
399 target customers that have tendencies to purchase  
400 individualized products or services.

401           One problem I hear is these aren't the only uses for  
402 this data, and the ability of entities that sell this  
403 information to collect such a wide variety of information on  
404 individuals is extremely troubling, because it allows bad  
405 actors to target vulnerable individuals, based on very  
406 specific and granular data, that has been collected across a  
407 line of online and offline platforms.

408           Another problem is that this information creates a

409 personal record that few, if any consumers what is exactly  
410 contained in it. Consumers have no ability to edit that  
411 profile, like they would their credit report, but the records  
412 maintained on the databases are unregulated, and often  
413 maintained more and wider-ranging information than in a  
414 credit report, if the information is not used for products or  
415 services that fall under the Fair Credit Reporting Act.

416 Information about transactions, behaviors, and online,  
417 offline, and that occur offline, are also becoming more  
418 prevalent in these records that can be purchased from  
419 companies that sell this marketing information. Nearly every  
420 chain store has some sort of discount or club card to collect  
421 information of consumer trends. Records are kept and sold of  
422 individuals who enter various sweepstakes through the mail.  
423 Social networking sites provide, possibly, the greatest  
424 threat, because they contain day to day activity of tens of  
425 millions of frequent users.

426 The aggregate of all of this data can provide a  
427 tremendously detailed picture of a person's daily life,  
428 interests, habits, and behavior, which that person may never  
429 know exists. We have laws that regulate how this information  
430 can be used by financial institutions and relating to medical  
431 privacy, but outside of these defined areas, this information  
432 is largely unregulated, and has the potential to tremendously

433 harm consumers.

434           And I want to thank the chair of both subcommittees for  
435 the hearing today, and continue looking into this issue, and  
436 I look forward to our witnesses' testimony.

437           I yield back the balance of my time.

438           [The prepared statement of Mr. Green follows:]

439 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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440           Mr. {Rush.} The chair thanks the gentleman. The chair  
441 now recognizes the gentleman from Illinois, Mr. Shimkus, for  
442 2 minutes.

443           Mr. {Shimkus.} Thank you, Mr. Chairman. I will be  
444 brief.

445           We have free over-the-air radio. We have free over-the-  
446 air TV. We have free email. We live in a great country, and  
447 one of the reasons why we have free email is the ability for  
448 people to put advertising banners on that.

449           And I am talking about Gmail and Hotmail, and we need to  
450 be very, very careful that this great benefit, that millions  
451 of Americans take advantage of, does not get hindered,  
452 disrupted, or destroyed by aggressive legislation in this  
453 area, and I yield back my time.

454           I yield back the balance of my time.

455           [The prepared statement of Mr. Shimkus follows:]

456 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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457           Mr. {Rush.} The chair thanks the gentleman for his  
458 brevity. The chair now recognizes the gentleman from  
459 Pennsylvania, Mr. Doyle, for 2 minutes.

460           Mr. {Doyle.} Thank you, Mr. Chairman, for holding this  
461 hearing today. Trading and selling of personal information  
462 began as long ago as 1899. Two brothers created the Retail  
463 Credit Company to track the creditworthiness of Atlanta  
464 grocery and retail customers. Some people know that company  
465 now as Equifax.

466           Since then, the cost of storing and manipulating  
467 information has fallen sharply, and now, organizations  
468 capture increasing amounts of data about individual behavior.  
469 Consumers hunger for personalization. Products, services,  
470 websites that cater to them, that causes them to reveal  
471 information about themselves.

472           Ordering off a catalog reveals other information. Using  
473 their credit card yields more, and thinking you have to send  
474 in that warranty card can reveal almost your entire life to  
475 other parties.

476           But that information probably delivers better products,  
477 more targeted services, and a more enjoyable Internet  
478 experience. As Alessandro Acquisti of Carnegie Mellon  
479 writes: ``Is there a combination of economic incentives and

480 technological solutions to privacy issues that is acceptable  
481 for the individual and beneficial to society? In other  
482 words, is there a sweet spot that satisfies the interests of  
483 all parties?''

484         And then, what are the rules of the road that we need to  
485 put in place to make sure that consumers' privacy is  
486 protected and that commerce flourishes? That is what I hope  
487 to learn more about in today's hearing.

488         I want to credit the work dozens of dedicated faculty  
489 and students, working on consumers' data privacy at Carnegie  
490 Mellon University, located in the heart of my district, have  
491 done. CMU, the Data Privacy Lab, and CyLab, have all greatly  
492 contributed to the academic literature, commercial  
493 consciousness, public awareness, and my understanding of this  
494 issue.

495         Thank you, Mr. Chairman, and I yield back.

496         I yield back the balance of my time.

497         [The prepared statement of Mr. Doyle follows:]

498 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
499           Mr. {Rush.} The chair thanks the gentleman. The chair  
500 now recognizes the gentleman from Louisiana, Mr. Scalise, for  
501 2 minutes.

502           Mr. {Scalise.} Thank you, Chairman Rush and Boucher. I  
503 want to thank you and Ranking Members Radanovich and Stearns  
504 for having this hearing on the collection and use of personal  
505 information.

506           I am pleased that both subcommittees are examining this  
507 issue. I know that Congress and this committee have held  
508 hearings on privacy in the past, but as we all know,  
509 consumers' personal information is being collected more and  
510 more every day, often without their knowledge, through both  
511 online and offline modes of commerce. Whether they are  
512 participating in a survey, using Facebook, or even ordering a  
513 product over the phone.

514           Given the importance of information in today's economy,  
515 and given how often consumers give out their personal  
516 information, there is a genuine cause for concern.  
517 Therefore, we must continue to examine ways to ensure  
518 consumers don't have their personal information compromised  
519 or misused.

520           As one pointed out in our last joint hearing, many  
521 Internet companies are offering the ability to opt-in or opt-

522 out of the company's policies to use or share personal  
523 information they collect. But those policies often do not  
524 address the collection of the data. The collection and use  
525 of personal information can help companies better serve  
526 customers, market products to certain consumers, and verify  
527 consumers' identity.

528         But the potential for danger does exist. Personal  
529 information could easily be compromised, and there are bad  
530 actors that use consumers' personal information in ways that  
531 take advantage of the consumer, and in some cases, in ways  
532 that are illegal.

533         Consequently, there are issues that we must address. As  
534 we take those into consideration, and debate the best steps  
535 moving forward, I hope we proceed carefully when drafting  
536 legislation in this area. As I stated at the previous  
537 hearing on behavioral advertising, I hope the focus of  
538 today's hearing is how we can protect consumers and their  
539 personal information, and what steps the industry will take  
540 on their own to do that.

541         I hope today's hearing does not focus on ways government  
542 can get more involved in areas of people's lives where it  
543 does not belong. For this reason, I believe that if self-  
544 regulation is not sufficient, and if any privacy regulatory  
545 requirements are needed, they should be targeted, consistent,

546 and not be greater for one business or industry than they are  
547 for another. Congress should not pick winners and losers.

548 I look forward to hearing the comments of our panelists  
549 today, particularly on the collection of data through offline  
550 methods, and how companies are using this data. I also hope  
551 to hear about current security measures that companies have  
552 in place, and any they may be planning to implement in the  
553 future, to ensure the protection of personal information.

554 It is important that these committees understand their  
555 positions and activities, as well as all of the implications  
556 of collecting and using personal information.

557 Thank you, and I yield back.

558 I yield back the balance of my time.

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

560 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
561           Mr. {Rush.} The chair thanks the gentleman. The chair  
562 now recognizes the gentlelady from California, Mrs. Matsui,  
563 for 2 minutes.

564           Ms. {Matsui.} Thank you, Mr. Chairman, and I thank you  
565 and Chairman Boucher for calling today's joint hearing. And  
566 I applaud your leadership in addressing this important issue.  
567 I would like to also thank our panelists for being with us  
568 this afternoon.

569           Today, we will be examining the collection and  
570 commercial use of consumer information across the offline,  
571 online, and mobile marketplaces. Without their knowledge or  
572 approval, consumers' personal information is being collected  
573 when they conduct daily activities, such as using the  
574 Internet, shopping at the grocery store, or even ordering  
575 takeout from their local favorite restaurants, and that is  
576 just to name a few.

577           In today's economy, information is everywhere, and it is  
578 to everyone. Unfortunately, it is essentially impossible to  
579 protect one's personal information these days, and it is  
580 understandable that most Americans simply do not trust that  
581 their personal information is properly protected.

582           Privacy policies and disclosures should be clear and  
583 transparent, so consumers can choose what information, if

584 any, they want others to know, instead of inappropriate  
585 collection and misuse of that information. Consumers should  
586 also understand the scope of the information that is being  
587 collected, what it is being used for, the length of time it  
588 is being retained, and its security. The more information  
589 that consumers have, the better.

590         Moving forward, we must assure that Americans feel  
591 secure that their personal information will not be misused  
592 the next time they surf the Internet, shop at a grocery  
593 store, or eat carryout from a restaurant. Meaningful privacy  
594 safeguards should be in place, while making certain that we  
595 do not stifle innovation.

596         Thank you, again, Mr. Chairman, for holding this  
597 important hearing, and I yield back the balance of my time.

598         I yield back the balance of my time.

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

600 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
601           Mr. {Rush.} The chair thanks the gentlelady. The  
602 gentlelady from Tennessee is recognized for 2 minutes.

603           Mrs. {Blackburn.} Thank you, Mr. Chairman, and welcome  
604 to our witnesses. We are glad you are here, and I am pleased  
605 that we are having this hearing today.

606           Nearly everything that we do on the Internet is  
607 monitored, and one of the things that we need to do is make  
608 certain that there is an understanding of what a level of  
609 privacy is, and what those expectations are, and make certain  
610 that we put some good rules of the road in place.

611           At the same time, we don't want to stifle the engines of  
612 Internet commerce and e-commerce, that have been an  
613 absolutely wonderful economic driver, especially for many  
614 small businesses. And in areas like mine, all the area from  
615 Memphis to Nashville, where we have so many small businesses  
616 that do depend on those e-commerce formats to make certain  
617 that they are profitable.

618           Now, my constituents in Tennessee have raised with me  
619 the issue that there does seem to be an alarming trend, in  
620 which ads from some well-known brands are consistently  
621 appearing on sites that traffic illegal content, such as  
622 pirated movies and music, and these sites are often located  
623 outside the U.S., and may be linked to broader criminal

624 enterprises, that clearly have no regard for the privacy of  
625 others. They are very concerned about this, and they want to  
626 make certain that that is an issue that is addressed, as we  
627 move forward in this debate.

628 They are also concerned about rules, as we look at  
629 privacy, something that, about Congress getting in the  
630 business of dictating what data is acceptable or  
631 unacceptable, and distorting how that travels up and down the  
632 pipe.

633 So, we need to be responsible, looking for responsible  
634 solutions that are going to both protect consumers and  
635 empower consumers to have control over their data, and allow  
636 businesses to continue with their e-commerce format.

637 So, welcome, look forward to hearing your comments.

638 I yield back the balance of my time.

639 [The prepared statement of Mrs. Blackburn follows:]

640 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

641           Mr. {Boucher.} [Presiding] Thank you very much, Ms.  
642 Blackburn. The gentleman from Maryland, Mr. Sarbanes, is  
643 recognized for 5 minutes.

644           Mr. {Sarbanes.} I waive. I waive my opening.

645           I yield back the balance of my time.

646           [The prepared statement of Mr. Sarbanes follows:]

647 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
648           Mr. {Boucher.} I am sorry. Mr. Sarbanes, did you waive  
649 a statement? Okay. The gentleman will have time added to  
650 his question period.

651           The gentleman from California, Mr. McNerney, is  
652 recognized for 2 minutes.

653           Mr. {McNerney.} Well, thank you. I commend Chairman  
654 Rush and Chairman Boucher for convening this fascinating and  
655 important hearing.

656           As technology develops, the opportunity for abuse, I  
657 believe, is going to grow exponentially, and consequently,  
658 policy does need to keep pace, to ensure that consumers are  
659 protected.

660           A couple of things that I would like to learn this  
661 morning, this afternoon. First of all, I would like to get  
662 an idea of the scope of the potential problems. How is this  
663 data going to be able to be used to affect our lives? And  
664 secondly, I would like to understand what makes sense, in  
665 terms of how data access and data use can and should be  
666 restricted. And I want to thank you all. You represent  
667 organizations that collect data and use data, so you are on  
668 the frontlines.

669           And with that I will yield back.

670           I yield back the balance of my time.

671 [The prepared statement of Mr. McNerney follows:]

672 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
673           Mr. {Boucher.} Thank you very much. The gentleman from  
674 Ohio, Mr. Space, is recognized for two minutes.

675           Mr. {Space.} Thank you, Chairman Boucher. I would like  
676 to thank Chairman Rush and Ranking Members Radanovich and  
677 Stearns for convening our subcommittees today to discuss  
678 online and offline collection and use of consumer  
679 information.

680           I was struck, in reviewing our witnesses' testimony,  
681 that there seems to be limitless sources for information on  
682 consumers, publicly available data, data volunteered by  
683 customers, and data collected from customer-facing  
684 businesses. Taken individually, each of these datasets  
685 provides a partial picture of a consumer. However, when  
686 these datasets are combined, retailers and data brokers can  
687 cobble together a fairly complete customer profile.

688           And I find this fascinating. I certainly understand the  
689 benefits that such datasets can provide to businesses,  
690 especially small businesses, as highlighted by, and I hope I  
691 don't get this wrong, Ms. Bougie. With a name like Space, I  
692 can feel your pain. And to the extent that customer  
693 profiling can embrace or enhance commerce, I believe such  
694 data gathering is an important tool.

695           However, as outlined by our witnesses, there are also

696 some concerning possibilities about and regarding abuse of  
697 this information. It seems like common sense that there  
698 should be some protections built in to shield mentally ill  
699 citizens, for example, from repeated, unsolicited, targeted  
700 marketing.

701 The bottom line is that consumer datasets, compiled from  
702 information gathered online and offline, and the handling of  
703 such data, remain largely unregulated. This strikes me as  
704 being the Wild West of e-commerce. So that we have some  
705 critical interests to consider, and I welcome the continued  
706 discussion on this issue.

707 I look forward to working on this matter with my  
708 colleagues, and I yield back. Thank you, Mr. Chairman.

709 I yield back the balance of my time.

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

711 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
712           Mr. {Boucher.} Thank you very much, Mr. Space. The  
713 gentleman from Connecticut, Mr. Murphy, is recognized for 2  
714 minutes.

715           Mr. {Murphy.} Thank you, Mr. Chairman. Thank you for  
716 the hearing, to our chairmen and our ranking members.

717           Certainly, I think as we spend more time online, this  
718 issue of what data is being collected about each of us is  
719 increasingly critical. And I think we can all agree that  
720 most consumers would prefer to have a clear understanding of  
721 what information is being collected, and how it is being  
722 used.

723           But to some degree, I also believe that these consumers,  
724 if they think that the data collection is unobtrusive and  
725 inoffensive, and if it is being used, I think this point is  
726 important, if it is being used to give them information or  
727 opportunities that are relevant to them, that are catered to  
728 their interests, I think a lot of folks will take lesser  
729 offense to that type of data collection. Certainly, this is  
730 all predicated on a system that consumers can trust and  
731 verify.

732           Beyond this, I am interested today, and I hope the  
733 witnesses might elaborate on this, how the information that  
734 we are talking about today is being used to direct consumers

735 to or advertise on sites that might engage in the pirating of  
736 legal content. Because we know there are a vast number of  
737 sites available to users whose business model is developed on  
738 providing pirated content to individuals, sometimes for a  
739 price, and sometimes, because they are supported by ad  
740 revenue for free.

741 In combating piracy, it seems that we should look at how  
742 information derived from consumers is then being used to  
743 place advertisements, or direct individuals to places where  
744 we know illegal activity is occurring.

745 I hope to explore this issue in greater detail. I look  
746 forward to testimony and to listening to the questions. I  
747 thank the chairman and yield back.

748 I yield back the balance of my time.

749 [The prepared statement of Mr. Murphy follows:]

750 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
751           Mr. {Boucher.} Thank you very much, Mr. Murphy. The  
752 gentleman from Georgia, Mr. Barrow, is recognized for 2  
753 minutes.

754           Mr. {Barrow.} I thank the chair. I want to welcome all  
755 of the witnesses today.

756           I especially want to welcome Professor Chris Hoofnagle,  
757 whom I remember from many, many, many years ago, when I had  
758 the privilege of representing him as a county commissioner.  
759 It was obvious to me he was going places, then. I just  
760 wished I could stick around for the ride.

761           Mr. Chairman, I am pleased our subcommittees are meeting  
762 today to discuss the issue of online and offline data  
763 collection, and the commercial use of consumer information  
764 for the purpose of delivering targeted advertising.

765           I have no doubt that sharing consumer information offers  
766 benefits to all of us. The benefits pretty much sell  
767 themselves, at least, somebody can sell them. It is the  
768 costs that I am worried about.

769           As information brokerage continues to expand, it becomes  
770 more important than ever that we draw the line between  
771 enhanced data collection methods on the one hand, and  
772 unwarranted breach of personal privacy on the other.

773           In September, this committee was able to mark up H.R.

774 1319, the Informed Peer-to-Peer User Act, which I co-  
775 sponsored with Congresswoman Bono Mack. That bill tackles  
776 the privacy and security risks that come with peer-to-peer  
777 file sharing programs. I see the work that we are doing here  
778 today as a continuation of that effort, to protect personal  
779 privacy without discouraging market and technological  
780 innovation.

781 I want to thank Chairmen Rush and Boucher for their  
782 leadership in addressing this issue. With that, I yield back  
783 the balance of my time.

784 I yield back the balance of my time.

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

786 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
787 Mr. {Boucher.} Thank you very much, Mr. Barrow.

788 Members having had an opportunity, now, to make opening  
789 statements, we turn to our panel of witnesses, and I would  
790 like to welcome each of you here this afternoon, and thank  
791 you for taking the time to share your view on this subject of  
792 great interest to all of us here.

793 Just a brief word of introduction about each of our  
794 witnesses. Mr. Chris, excuse me, Hoofnagle is the Director  
795 of Information Privacy Programs at the University of  
796 California Berkeley School of Law. Mr. George Pappachen is  
797 the Chief Privacy Officer at Kantar/WPP. Jennifer Barrett is  
798 the Global Privacy and Public Policy Executive at Acxiom.  
799 Zoe Strickland is the Vice President and Chief Privacy  
800 Officer for Wal-Mart Stores, Incorporated. Michelle Bougie  
801 is the Senior Internet Marketing Manager for  
802 LearningResources.com, and EducationalInsights.com. Pat  
803 Dixon is the Executive Director of the World Privacy Forum.

804 Without objection, each of your prepared written  
805 statements will be made a part of our record of proceedings  
806 today, and we would welcome your oral summaries.

807 And in the interests of time, because we are not sure  
808 when we are going to have recorded votes that may command our  
809 presence on the floor for an extended period, we would ask

810 that you try to keep your oral summaries to approximately 5  
811 minutes.

812           So, Professor Hoofnagle, with that admonition, I will be  
813 happy to begin with you.

814           Mr. {Professor.} Chairmen--

815           Mr. {Boucher.} Pull that microphone fairly close, and  
816 be sure to turn it on.

|  
817 ^STATEMENTS OF CHRIS HOOFNAGLE, DIRECTOR, INFORMATION PRIVACY  
818 PROGRAMS, UC BERKELEY SCHOOL OF LAW; GEORGE V. PAPPACHEN,  
819 CHIEF PRIVACY OFFICER, KANTAR/WWP; JENNIFER T. BARRETT,  
820 GLOBAL PRIVACY AND PUBLIC POLICY EXECUTIVE, ACXIOM; ZOE  
821 STRICKLAND, VICE PRESIDENT, CHIEF PRIVACY OFFICER, WAL-MART  
822 STORES, INC.; MICHELLE BOUGIE, SENIOR INTERNET MARKETING  
823 MANAGER, LEARNINGRESOURCES.COM AND EDUCATIONALINSIGHTS.COM;  
824 AND PAM DIXON, EXECUTIVE DIRECTOR, WORLD PRIVACY FORUM

|  
825 ^STATEMENT OF CHRIS HOOFNAGLE

826 } Mr. {Hoofnagle.} Thank you. Chairman Boucher and  
827 Ranking Members Radanovich and Stearns, and honorable members  
828 of the committee, thank you for holding this hearing today on  
829 an often overlooked issue in consumer protection.

830 While we have debated online privacy issues for the past  
831 decade, little attention has been focused upon how businesses  
832 collect, use, and disseminate information collected in  
833 offline contexts, for instance, at stores, at the point of  
834 sale, through surveys, sweepstakes, catalog sales, and the  
835 like.

836 I first approached this issue from a civil liberties  
837 perspective. About six years ago, I started highlighting the

838 relationships between offline marketing companies and the  
839 government. As Mr. Markey noted in his opening statement, he  
840 said that Americans would never allow the government to  
841 collect so much information about them. However, I found  
842 that many government agencies had simply outsourced their  
843 information collection activities on citizens by hiring  
844 marketing companies. Offline marketing companies had data on  
845 almost every American adult, and they had created techniques  
846 to analyze the data that could be adopted to law enforcement  
847 and intelligence needs.

848 More recently, my work has focused upon consumer  
849 protection in the offline marketplace. For some time, I  
850 tried to call attention to the sale of personal information  
851 about consumers among companies. I would find data cards,  
852 which are offers to sell personal information databases and  
853 put them online. These lists included databases that  
854 described consumers in pejorative ways, and I would key up my  
855 first exhibit.

856 This is a list of so-called impulsive consumers. It is  
857 difficult to read on the screen, but it is included as  
858 Appendix 2 in my testimony. The data marketplace has greatly  
859 outpaced legislative and regulatory interventions to protect  
860 consumer privacy.

861 For instance, in California, legislators acted quickly

862 to block phone companies from creating a wireless 411  
863 database. This would be a service to look up cell phone  
864 numbers. However, in focusing upon phone companies,  
865 California legislators missed the mark. Several data  
866 companies with no consumer relations whatsoever now market  
867 cell phone databases and other databases that list unlisted  
868 and private phone numbers.

869 Appendix 2 of my testimony gives an example of one that  
870 is collected through the phone numbers that are given when  
871 you order pizza, and this is my second exhibit. This is an  
872 information service that claims to get unlisted and cellular  
873 telephone numbers by collecting them from pizza delivery  
874 companies.

875 This brings me to a central point of my testimony today.  
876 American privacy law allows most offline businesses to sell  
877 customer data without giving the consumer notice or an  
878 opportunity to object. My public opinion research at UC  
879 Berkeley has focused upon whether consumers understand this.  
880 The findings are clear. Americans falsely believe that they  
881 enjoy a right of confidentiality with most businesses. This  
882 explains why they do not ask for privacy policies at the  
883 register, or opt out to information collection. They  
884 incorrectly assume that privacy law prohibits the use of  
885 their personal information. American don't understand that

886 the burden is upon them to object.

887         The lack of a legal framework that governs information  
888 collection and use offline leads to practices that Americans  
889 would object to, if they knew about them. I detail two in my  
890 written testimony. First, data companies use confidentiality  
891 agreements to keep information sharing secret. This means  
892 that if an advertiser wants to buy personal information about  
893 a group of people, the seller of the data binds the  
894 advertiser to confidentiality.

895         Database companies prohibit their clients from telling  
896 customers how data were acquired, what data were acquired,  
897 and what categories the consumer has been placed in. This  
898 means that if you go to a business and ask how did you get my  
899 information, the advertiser is contractually required to say  
900 we cannot tell you. This is part of a larger strategy that  
901 leaves consumers in the dark about information selling  
902 practices.

903         Second, in the offline context, and increasingly, in the  
904 online world, companies are using enhancement. This is the  
905 practice of buying additional data about existing consumers.  
906 So, for instance, have you ever been at a store, and have the  
907 cashier ask you what your phone number is?

908         If you share your phone number, that gives that retailer  
909 the ability to reverse lookup your name and home address.

910 Some of these problems could be solved with what I call data  
911 provenance, the ability to determine from where data was  
912 collected, and the rules and context governing its  
913 collection.

914         Since I have just ten seconds left, I would like to  
915 thank the committee again for holding this hearing, and I  
916 look forward to your questions.

917         [The prepared statement of Mr. Hoofnagle follows:]

918 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
919           Mr. {Boucher.} Thank you very much, Mr. Hoofnagle. Mr.  
920 Pappachen.

|  
921 ^STATEMENT OF GEORGE V. PAPPACHEN

922 } Mr. {Pappachen.} Chairman Boucher, Chairman Rush,  
923 Ranking Members Stearns and Radanovich, and members of the  
924 subcommittee, thank you for this opportunity to discuss an  
925 issue that is of critical importance to the businesses that I  
926 represent.

927 My name is George Pappachen, and I am the Chief Privacy  
928 Officer of Kantar, a division of WPP. As I have been doing  
929 in external venues and industry forums on issues of privacy  
930 and public policy, I am delighted to represent the interests  
931 of both Kantar and WPP here today.

932 Utilizing information to become as relevant as possible  
933 to consumers, and to transform the marketplace of products  
934 and services to be responsive to consumer needs, attitudes,  
935 and behaviors is at the heart of our business model. As you  
936 can appreciate, catering to consumer preferences on a  
937 continuous basis is simply not possible without the ability  
938 to collect or have access to reliable data and actionable  
939 insights.

940 The dialog taking place today is important, not only for  
941 the purpose of awareness and understanding of industry  
942 practices, but also, to grant perspective on our shared

943 respect for consumers. Getting it right with regard to our  
944 interaction with consumers is an essential element of  
945 business success for us. Our brands, and the client brands  
946 that we represent, have spent decades building trust with  
947 consumers and within the marketplace. Our involvement is  
948 really a continuation of that capital investment.

949         Kantar is one of the world's largest insight,  
950 information, and consultancy networks. Covering 80 countries  
951 and across the whole spectrum of research and consultancy  
952 disciplines, we offer clients insights at each and every  
953 point of the consumer or customer cycle.

954         Our services are employed by a majority of Fortune 500  
955 companies, domestic and foreign governmental entities at all  
956 levels, and almost every kind of brand that seeks to  
957 communicate to or have a relationship with consumers. We  
958 conduct market research, media measurement, which essentially  
959 means, for example, how many, knowing, measuring how many  
960 people watch TV, versus watch mobile TV, versus watch TV  
961 online. And we house consulting and specialty services that  
962 run the spectrum from brand value to retail, to healthcare,  
963 to government service management.

964         WWP is the world's leading communications services  
965 group. Through its operating companies, the group provides a  
966 comprehensive range of advertising and marketing services.

967           Kantar is a research and consultancy arm of WPP, and  
968 houses renowned brands, such as Millward Brown, TNS, Added  
969 Value, and Dynamic Logic. Other segments of WPP are creative  
970 agencies, such as Ogilvy and JWT, who create advertising,  
971 media agencies or other segments, like GroupM, which buy and  
972 sell advertising, and our public relations and public affairs  
973 firms, many of whom have a strong presence right here in D.C.

974           Helping clients manage communications has certainly  
975 become more challenging in the recent past, due to audiences  
976 being more fragmented across the range of media platforms and  
977 devices. And challenging also, because of media convergence,  
978 the idea that although people are using different devices to  
979 access content, or to communicate, these platforms can be  
980 interlinked or overlapped, because of unifying digital  
981 language.

982           Simply put, whereas consumers were confined to a limited  
983 number of channels broadcast over a handful of distinct  
984 platforms, such as TV, new media has allowed a proliferation  
985 of channel choices. Staying ahead of these market shifts, so  
986 that we continue to deliver best-in-class services to our  
987 clients, who trust us with their investment and advertising  
988 and marketing, is a matter of high priority for us.

989           Consistent with that is our commitment to provide  
990 consumers with brand experiences that are relevant and

991 responsible. As noted earlier, Kantar provides market  
992 research services, and they use a variety of methods to  
993 accomplish this objective. Market research is the voice of  
994 the consumer, the user, the citizen, or the donor. As you  
995 can surmise, market research fuels a variety of commercial  
996 and governmental services.

997         Researchers use various methods of data collection.  
998 Certainly, there are parts of the world where data collection  
999 is primarily done offline, via telephone interviews, mall  
1000 intercept surveys, paper diaries, et cetera. However, in the  
1001 U.S. in particular, much of our research is now conducted  
1002 online, online panels, sometimes dedicated to single sectors  
1003 such as healthcare, web intercept surveys, where consumers  
1004 are invited in real time, online, to give opinions, online  
1005 communities, and various other methods are routinely  
1006 employed.

1007         Some methods utilize cookies or tracking technologies to  
1008 discern ad exposure, understand site visitation and other  
1009 metrics. Passive tracking technology has positively impacted  
1010 market research, in that it allows shorter surveys, and for  
1011 respondents to not have to observe total recall on all media  
1012 matters.

1013         It is often said that interactive platforms permit  
1014 greater customization for the user, and better measurement

1015 for the content of service providers. I would agree with  
1016 that, from an aspirational and inherent capability  
1017 perspective. While the promise of customization and  
1018 improvement measurement is real, and progress is encouraging,  
1019 I believe the medium is still maturing, and still only on its  
1020 way to fulfill on potential.

1021 Earlier this year, the Federal Trade Commission released  
1022 its staff report on online behavioral advertising, and this  
1023 summer, a coalition of industry trade associations, which  
1024 included the Interactive Advertising Bureau, 4A's and several  
1025 others, and various businesses, they put forward a self-  
1026 regulatory framework, to address the issues raised by  
1027 Congressional and regulatory concerns.

1028 Our companies, like 24/7 Real Media and GroupM, have  
1029 taken an active role in the coalition work, but we haven't  
1030 stopped there. We took up the challenge to produce market  
1031 models, to work out the implementation needs of the proposed  
1032 self-regulatory scheme. We established a cross-WPP  
1033 leadership team to develop and test tools, actual tools,  
1034 which provide enhanced notice and greater transparency about  
1035 online tracking.

1036 We have sought to collaborate with technology firms and  
1037 others, who would introduce real solutions for implementing  
1038 the full elements of the self-regulatory framework.

1039           While behavioral advertising is one way to build a more  
1040 customized user experience, there are still many other  
1041 innovations the web enables in this area. Some of them  
1042 employ designs that don't necessarily require tracking  
1043 behavior or activity across multiple sites, whereas others  
1044 do.

1045           It is really the vibrancy of the Internet that allows  
1046 the variety of the models that we see today. It is terrific.

1047           Mr. {Boucher.} Mr. Pappachen, if you could wrap up.  
1048 You are well over a minute beyond your time now.

1049           Mr. {Pappachen.} Traditional and relevant standards,  
1050 such as personally identifiable information and sensitive  
1051 data classifications have certainly helped chart the  
1052 regulatory framework of the online media, and I think has a  
1053 role to play going forward.

1054           I am of the firm belief that proactive privacy is  
1055 possible in all areas I have discussed, and that it can be  
1056 accomplished within a self-regulatory framework.

1057           Building trust with consumers is a primary tenet of any  
1058 successful business, and we are committed to contributing to  
1059 a successful formula. I am encouraged by the steps that  
1060 Members of Congress, and particularly those in these two  
1061 subcommittees have taken to explore the topic of consumer  
1062 data collection and use.

1063 I thank the subcommittee for allowing me this time to  
1064 put forth our position, and I would look forward to staying  
1065 engaged and active in the ongoing conversation.

1066 [The prepared statement of Mr. Pappachen follows:]

1067 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
1068 Mr. {Boucher.} Thank you, Mr. Pappachen.

1069 We have two recorded votes pending on the floor of the  
1070 House. We are going to hear from Ms. Barrett, and then, the  
1071 subcommittee will briefly recess, while we respond to those  
1072 votes.

1073 We will pick up when they are concluded.

1074 Ms. Barrett.

1075 Ms. {Barrett.} Thank you, Chairman Boucher, Ranking  
1076 Member Radanovich.

1077 Mr. {Boucher.} And could you pull the microphone very  
1078 close, please? Thank you.

|  
1079 ^STATEMENT OF JENNIFER T. BARRETT

1080 } Ms. {Barrett.} Members of the subcommittee. Thank you  
1081 the opportunity to share Acxiom's perspective.

1082 First, let me say we are in strong support of  
1083 appropriate use of consumer information. Protecting privacy  
1084 has been a priority for us for decades. Use of consumer  
1085 information to defraud, discriminate, embarrass, or harass  
1086 consumers is inappropriate, and should be illegal, as it  
1087 already is in many situations.

1088 However, consumer data make a significant contribution  
1089 to our Nation's economy, growth, and stability. For 40  
1090 years, Acxiom has been a market leader in responsibly  
1091 providing innovative marketing services and data solutions to  
1092 help our clients deliver better products and services,  
1093 smarter, faster, and with less risk.

1094 Marketing services are 70 percent of our revenues, and  
1095 data solutions are the remaining 30. Our marketing services  
1096 are specialized computer services that help businesses,  
1097 nonprofits, and political organizations manage and use their  
1098 customer information. Although e-commerce has greatly  
1099 increased the availability of products for consumers, it has  
1100 also introduced new risks that make a trusted relationship

1101 more important, and more difficult.

1102           We help clients accurately identify a particular  
1103 individual and integrate their information across multiple  
1104 lines of business and varied points of contact. Our email  
1105 and mobile message delivery services help our clients respect  
1106 consumer preferences while complying with various laws like  
1107 CAN-SPAM.

1108           Our data solutions, on the other hand, provide marketing  
1109 intelligence and support for identity and risk management  
1110 decisions. We deliver actionable information not readily  
1111 available to our clients, to help fill an important gap  
1112 between knowing what their customers bought and knowing what  
1113 they like, how they spend their time, and how they feel about  
1114 certain issues.

1115           Untargeted interactive communications are the junk mail  
1116 of the digital age, yet this advertising has funded much of  
1117 what consumers enjoy most about this interactive experience.  
1118 Consequently, the real winner in the appropriate use of  
1119 consumer information is the consumer. In the offline world,  
1120 Acxiom operates in a fully personally identifiable realm, but  
1121 in the online world, until the consumer chooses to identify  
1122 themselves to a website or an interactive device, Acxiom's  
1123 solutions, in Acxiom's solutions, the consumer remains  
1124 anonymous.

1125           We obtain the data we bring to market from several  
1126 hundred carefully chosen sources. It falls into three  
1127 general categories. Public records and publicly available  
1128 data provides names, contact information, and some  
1129 demographic information, that come from public directories  
1130 and other state and local registries. Responses to surveys  
1131 and questionnaires provide additional demographic, lifestyle,  
1132 and interest data. Finally, Acxiom acquires some data  
1133 directly from consumer-facing organizations.

1134           For marketing purposes, consumers are given notice and  
1135 choice about their data being shared with parties like  
1136 Acxiom. We use only very general summary data, that would  
1137 indicate certain lifestyles or interests.

1138           For our identity and risk solutions, the focus is on  
1139 identifying data, which in some instances, actually comes  
1140 from heavily regulated industries. It is important to note  
1141 that Acxiom does not collect online browsing or search  
1142 activities on consumers.

1143           We have a culture of respecting consumer privacy. Our  
1144 own guidelines are more restrictive than laws or industry  
1145 standards. We offer an opt-out from any or all of our  
1146 marketing solutions, and access and correction in our  
1147 identity and risk solutions.

1148           Before I close, I want to clear up two common

1149 misconceptions. First, Acxiom does not have one big database  
1150 that contains detailed information about everybody. Instead,  
1151 we have many databases designed to meet very specific needs  
1152 or our clients. Second, no marketing information we provide  
1153 to clients can be used for decisions of credit, insurance  
1154 underwriting, or employment.

1155         The environment in which data is collected and our  
1156 clients communicate with their customers has changed a lot in  
1157 our 40 years. Online is no longer separate and distinct from  
1158 the offline, mobile, or interactive TV world. Also, privacy  
1159 is a very contextual issue, and varies by application, while  
1160 different individuals feel very differently about it.

1161         The committee's greatest challenge is to identify where  
1162 practices should be regulated by laws, versus what should be  
1163 covered by interim self-regulation or best practice.  
1164 Complicating your task is anticipating what changes  
1165 technology might alter, either in the benefits or the risks.

1166         Similar analysis is taking place across the world, but  
1167 at present, no one can claim to have developed a truly  
1168 workable approach. While the committee considers additional  
1169 regulation, we should be clear about the extent of harm, or  
1170 market failure it believes has occurred, and look for the  
1171 least restrictive alternative. Informational hearings help  
1172 inform all parties where policymakers' concerns lie, and

1173 where industry needs more proactive initiatives. However, if  
1174 privacy laws overreach, everyone suffers, including our  
1175 economy.

1176 Mr. Chairman, we thank you for the opportunity to be  
1177 here today, and are available to answer any other questions.

1178 [The prepared statement of Ms. Barrett follows:]

1179 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1180           Mr. {Boucher.} Thank you very much, Ms. Barrett. We  
1181 are going to stand in recess for what will approximately be a  
1182 half-hour. It may be a bit shorter than that, depending on  
1183 how quickly the vote goes.

1184           So, stay close, don't venture far, and as soon as we  
1185 return, we will pick up our hearing.

1186           [Whereupon, at 1:23 p.m., the subcommittee recessed, to  
1187 reconvene at 1:58 p.m.]

1188           Mr. {Boucher.} The committee will reconvene, and thank  
1189 you for your patience during our absence.

1190           We continue, with testimony from our expert panel this  
1191 afternoon, and we are pleased to hear from Ms. Strickland.

|  
1192 ^STATEMENT OF ZOE STRICKLAND

1193 } Ms. {Strickland.} Good afternoon. Thank you, Chairman  
1194 Rush. And thank you for inviting Wal-Mart to participate in  
1195 today's hearing on online and offline privacy.

1196 My name is Zoe Strickland, and I am Wal-Mart's Chief  
1197 Privacy Officer. For us, good privacy is good business. As  
1198 the largest retailer and private employer in the U.S., with  
1199 approximately 140 million customers shopping in our U.S.  
1200 stores every week, Wal-Mart considers an array of privacy  
1201 issues on a daily basis.

1202 Unlike companies that interact with customers or other  
1203 businesses primarily online, Wal-Mart approaches privacy from  
1204 a very broad perspective. Wal-Mart operations cover almost  
1205 every conceivable privacy topic, channel, and geographical  
1206 region.

1207 Given the depth and breadth of Wal-Mart's understanding  
1208 of consumer privacy issues, we appreciate the committee  
1209 including Wal-Mart in today's discussion, and would encourage  
1210 you to engage other similarly situated companies. It is  
1211 imperative that as privacy rules are developed, legislators  
1212 take the time to fully understand the impact to consumers  
1213 that have both online and offline relationships with

1214 companies.

1215 Wal-Mart supports a principle-based approach to privacy,  
1216 rather than a focus on one particular technology or activity.  
1217 As an example of a principle-based approach, this summer, we  
1218 updated our customer privacy policy for Wal-Mart operations.  
1219 The updated policy is based on the Fair Information Practice  
1220 Principles, as well as industry standards and global  
1221 guidelines.

1222 Our goal was to make it transparent, meet best  
1223 practices, and to be integrated across all business units.  
1224 To further increase transparency, we included a summary  
1225 notice that links through to the detailed policy. The new  
1226 privacy policy provides customers more control over their  
1227 data. Some examples are creating a preference center that  
1228 allows customers to tell us directly their preferences  
1229 regarding direct marketing and data sharing for marketing  
1230 purposes, establishing a stricter standard for data uses  
1231 customers typically consider more sensitive, Wal-Mart uses  
1232 opt-in for telemarketing and data sharing, providing  
1233 additional or enhanced opt-out mechanisms, such as for email  
1234 ratings and online behavioral advertising, giving customers  
1235 greater access to their own information, and finally,  
1236 providing more options to submit questions and concerns.

1237 This initiative gave us further insight into how to

1238 focus on underlying privacy principles, and then, to  
1239 operationalize them. With regard to online behavioral  
1240 advertising, Wal-Mart provides clear notices and opt-outs,  
1241 consistent with the FTC self-regulatory principles, as well  
1242 as industry best practices.

1243 Equally important, in our view, we integrated our  
1244 approach into our larger view of privacy in both the online  
1245 and offline worlds. When and how is it appropriate to give  
1246 notice? When and how should consumer choice be offered?

1247 We do believe notice and choice are still central  
1248 privacy protections, even if further protections are  
1249 warranted. We think our experiences with the use of  
1250 electronic product code technology, EPC, is a useful example  
1251 that demonstrates how a broader, principle-based approach is  
1252 appropriate and needed.

1253 At the simplest level, EPC is a next generation barcode.  
1254 Currently, EPC is primarily used to track certain cases and  
1255 pallets in the supply chain. When EPC may be offered on  
1256 individual products on the sales floor, future, potential  
1257 customer benefits are real and direct. Examples include  
1258 receipt-less returns, product authenticity, traceability, and  
1259 food and product safety.

1260 Even though EPC tags in retail contain no personal data,  
1261 we are building in privacy protections. As a cornerstone of

1262 EPC development, Wal-Mart is designing its use to enable  
1263 choice. EPC tags will be easily removable from the product  
1264 or its packaging, such as by placing it on the price tag. If  
1265 EPC tags used by the retail industry are ever embedded, we  
1266 will offer a mechanism to disable the tag. We believe that  
1267 choice is absolutely the right model for this technology.

1268         Some, perhaps most consumers will appreciate its  
1269 benefits. Some will not, but ultimately, consumers should be  
1270 able to choose which they prefer.

1271         A challenge, of course, is how to provide appropriate  
1272 notice. This covers both how consumers know this technology  
1273 is in operation, and also know what this technology actually  
1274 means. A variety of methods and channels are possible,  
1275 including notices on products themselves, notices on or in  
1276 facilities, and website information. You could see how a  
1277 debate that focuses solely on notices provided on websites,  
1278 like pop-ups, would miss the boat for this technology.

1279         In conclusion, Wal-Mart interacts with consumers  
1280 frequently, and in every conceivable way. A uniform, or at  
1281 least consistent privacy framework, that includes standards  
1282 such as consumer choice is effective for both consumers and  
1283 businesses.

1284         A privacy regime based on a set of core principles will  
1285 be sufficiently flexible to be applied in multiple contexts.

1286 Consumers deserve to know what to expect with regard to how  
1287 their information is being collected and used, where they may  
1288 obtain further details if they desire, and how they can make  
1289 appropriate choices regarding the use of their data or  
1290 technology.

1291           Thank you again for the opportunity to testify today.  
1292 We look forward to continuing to work with you, and I am glad  
1293 to answer any questions.

1294           [The prepared statement of Ms. Strickland follows:]

1295 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

1296           Mr. {Boucher.} Thank you very much, Ms. Strickland.

1297 Ms. Bougie.

|  
1298 ^STATEMENT OF MICHELLE BOUGIE

1299 } Ms. {Bougie.} Thank you, Mr. Chairman and members of  
1300 the subcommittees. My name is Michelle Bougie, and I am the  
1301 Senior Internet Marketing Manager of Learning Resources,  
1302 Incorporated, of Vernon Hills, Illinois, a small business  
1303 manufacturer and distributor of classroom materials and  
1304 educational toys.

1305 We sell both business to business and business to  
1306 consumer, maintaining an extensive website and e-commerce  
1307 store, as well as undertaking an active direct mail program  
1308 for schools, teachers, and consumers.

1309 In our business, the protection of consumer information  
1310 is paramount. We have long maintained a detailed privacy  
1311 policy, which is posted prominently on our website. Our  
1312 commitment to the protection of consumer privacy is  
1313 voluntary, but it is also required in the marketplace. Self-  
1314 regulation by industry and market standards works  
1315 effectively, and I urge you to be cautious in regulating the  
1316 use of consumer data to avoid unintended consequences, that  
1317 might put small businesses at a permanent market  
1318 disadvantage, by preventing us from using technology to grow  
1319 and expand.

1320           In the last 12 years, I have worked with literally  
1321 dozens of companies in various capacities relating to the use  
1322 of consumer data. In my experience, industry voluntary  
1323 privacy standards have been universally adopted and are a  
1324 regular element of any commercial transaction, online or  
1325 offline. Privacy is a routine and fundamental part of good  
1326 business practices involving the sharing and use of consumer  
1327 data today.

1328           Industry voluntary privacy standards were developed to  
1329 meet consumer expectations, and to match best practices from  
1330 traditional direct mail. Companies who do not participate in  
1331 self-regulatory practices, such as protecting consumers'  
1332 financial information, or fail to follow opt-out  
1333 instructions, are blacklisted by consumers.

1334           As we all come to understand, the consumer is now more  
1335 powerful online. Consumers use the power of social media to  
1336 warn others about websites that offend or use bad practices.  
1337 Consumers will, likewise, use the same tools to promote  
1338 businesses that use best practices.

1339           It is important to recognize the collection and use of  
1340 consumer data is essential to improving the consumer  
1341 experience online. Cookies and other tracking means were  
1342 developed to make it possible to make targeted product and  
1343 service offers that match consumer needs. This sophisticated

1344 information gathering process has created a \$300 billion  
1345 industry and 1.2 million jobs. We must be careful not to  
1346 endanger this major source of jobs and enhanced consumer  
1347 choice.

1348 Consumers can control the collection of consumer data in  
1349 many important ways. Many companies like ours offer the  
1350 right to opt out for consumers, and choose to not participate  
1351 in our marketing activities.

1352 Opt-out options are far superior to opt-in options, both  
1353 from the standpoint of businesses and consumers. Businesses  
1354 prefer opt-outs, because they believe that few consumers will  
1355 ever opt-in, as fear alone discourages most people from  
1356 opting in. Consumers have already experienced an online  
1357 world filled with opt-ins. In the early days of the  
1358 Internet, featured cautious approaches by websites with many  
1359 opt-in choices. Consumers were prompted to accept website  
1360 terms before entering, a practice that turned off many  
1361 consumers at the early online experience, moved at a glacial  
1362 pace, slowing the online purchase process for customers, and  
1363 lowering revenues for businesses.

1364 Consumers have ways to control the collection of data.  
1365 Internet browser software can notify consumers of cookies,  
1366 ActiveX controls, or other means of data collection. In  
1367 order to maximize the speed and pleasure of their online

1368 experiences, many consumers turn off these warnings.

1369         Again, consumers and businesses are making these privacy  
1370 options and choices without the need for federal regulation.

1371 We believe that regulation of consumer data may sharply  
1372 curtail our ability to grow, both online and offline. Small  
1373 businesses don't generate enough leads to keep customer lists  
1374 fresh and growing. We must have access to market data to  
1375 find new customers.

1376         Likewise, consumers need us to promote our products and  
1377 services, because without this marketing, small businesses  
1378 are just too hard to find.

1379         In our ability to collect and use this data is  
1380 curtailed, we are vulnerable to large businesses gaining an  
1381 effective monopoly on consumer identities and preferences.  
1382 Large businesses, with high web traffic, or many storefronts,  
1383 have the means to generate and use consumer data for  
1384 prospecting, to remain dominant. Small businesses will lose  
1385 this game every time.

1386         I urge you to be cautious and to carefully avoid  
1387 unintended consequences. The Internet is a huge job creator,  
1388 and one of the great drivers of today's complex and rapidly  
1389 evolving economy.

1390         A one size fits all solution is very dangerous in an  
1391 economy of this complexity. We believe the new legislation

1392 should take a crawl, walk, run approach, focusing on the most  
1393 sensitive data, such as financial information or healthcare  
1394 data, and relying on opt-out mandates for routine commerce.  
1395 By taking such a prudent approach, Congress can ensure that  
1396 small businesses do not find themselves in a permanent  
1397 federally mandated market disadvantage.

1398           Thank you for considering my views on this subject. I  
1399 am happy to answer any questions.

1400           [The prepared statement of Ms. Bougie follows:]

1401 \*\*\*\*\* INSERT 5 \*\*\*\*\*

- |
- 1402 Mr. {Boucher.} Thank you very much, Ms. Bougie.
- 1403 Ms. {Bougie.} Thank you.
- 1404 Mr. {Boucher.} Ms. Dixon.

|  
1405 ^STATEMENT OF PAM DIXON

1406 } Ms. {Dixon.} Thank you. I would like to thank the  
1407 chairmen for inviting me here today. I am Pam Dixon. I am  
1408 Executive Director of the World Privacy Forum.

1409 We are a nonprofit, public interest research group,  
1410 based in California. We focus on in-depth research of  
1411 privacy issues.

1412 The online and offline collection of information from  
1413 consumers matters, because it impacts our lives, whether we  
1414 know it or not. In the past, consumers have been told, you  
1415 better watch out, because you have got to act a certain way,  
1416 because something might go in your permanent record. We  
1417 heard this in school, when we were young. But today, because  
1418 of the large commercial databases, and those activities  
1419 related to those commercial databases, we have a new kind of  
1420 permanent record. I call this the modern permanent record.

1421 This is a permanent record compiled from rich online and  
1422 offline resources, and it can be used to deny or offer  
1423 benefits, services, and goods and information to consumers.

1424 What I would like to do is talk about how these  
1425 commercial databases can be used to create a very detailed  
1426 picture of a consumer, and what that picture can do to a

1427 consumer's life. And to do that, I would like to walk you  
1428 through how the modern permanent record is created and used.

1429         So, first, one source for the modern permanent record is  
1430 marketing lists and databases. These are typically sourced  
1431 from highly identifiable data. We are not talking about  
1432 pseudonymous data residing on a hard drive somewhere. We are  
1433 really talking about data where someone knows your name.

1434         If you can look at the monitor, you will see a list of  
1435 20 million consumers. This is an ailments list, and it is a  
1436 data card that is being sold on consumers. It lists detailed  
1437 demographic information, and it also lists the various  
1438 diseases that they have. This list is an unregulated list.  
1439 It is outside of HIPAA, because these people gave their  
1440 information up in some way or another, sometimes with more  
1441 knowledge than another.

1442         In the next list, you will see it is a list of mental  
1443 health sufferers. This is a list of 3 million consumers who  
1444 landed on a telemarketing list, or a list like this, and it  
1445 talks about 2 million with anger, antisocial diseases, ADD,  
1446 ADHD, autism, bipolar, and so forth. And the company says  
1447 these people, marketing to them is, they are extremely  
1448 receptive to any campaign, because they suffer from various  
1449 mental problems.

1450         And the real impact of these kinds of lists, that are so

1451 unregulated, is being seen already today. It is not  
1452 theoretical. So, for example, one 91-year-old elderly vet  
1453 was profiled in the New York Times. He landed on one such  
1454 list, and what happened is his, he filled out a sweepstakes  
1455 form, and he landed on a telemarketing list. It was sold,  
1456 and as a result of bad actors purchasing the list, he was  
1457 bilked of his life savings. And this gentleman, once he was  
1458 on the list, he had no effective rights to remove himself  
1459 from the list, or mitigate those issues.

1460 Another way that the modern permanent record is created  
1461 is through what I call non-Fair Credit Reporting Act  
1462 databases, or noncredit databases. These are databases that  
1463 have rich scores of information in them. However, they may,  
1464 even if they have identical information to what could be  
1465 contained in a database subject to the FCRA, they are not  
1466 subject to the FCRA, because they are used for different  
1467 purposes.

1468 An example of this is the Badcustomers database, and we  
1469 have a screenshot of that website. That website says: ``Are  
1470 your purchasing transactions being denied? Find out if you  
1471 have been blacklisted before it is too late.'' This database  
1472 has 6 million consumers on it right now, and it has only been  
1473 in existence for about a month. And the way consumers land  
1474 on this database is that they dispute charges to their credit

1475 account.

1476 Now, if that sounds familiar, it is because identity  
1477 theft victims must dispute charges on their credit cards to  
1478 move forward with their lives. So, these are the kinds of  
1479 databases where yes, you disputed a charge, but what does  
1480 that actually mean? Was it because you were a victim of  
1481 fraud, or because you were a bad actor? This is a very  
1482 difficult thing.

1483 The third way that the modern permanent record is  
1484 compiled and created is through a newer type of database,  
1485 behavioral and transactional databases. These are the  
1486 databases that put the 3-D into the consumer. They provide  
1487 the real detailed picture of the consumer, and put flesh on  
1488 the bones of the consumers.

1489 An example of this is eye gaze tracking cameras in  
1490 retail stores. These cameras are not visible to consumers.  
1491 What they do is they track, basically, the number of  
1492 consumers that have walked by certain points in the store.  
1493 They also identify what the consumer is looking at, and for  
1494 how long. But what has happened, at least in the past year,  
1495 is that this type of technology has been also combined with  
1496 facial recognition technology. So, what happens is that the  
1497 consumer walking down the store, who is being captured by the  
1498 eye gaze tracking camera is also recognized and then marketed

1499 to.

1500 Now, that is a practice that is in use today.

1501 Everything that I have told you is in use today, and it is  
1502 not theoretical. So, the question this committee has to face  
1503 is, is it worth the risk involved to consumers, when you have  
1504 these large, aggregated pictures of consumers that can define  
1505 their lives. Is it worth that risk to leave them  
1506 unregulated?

1507 And I would argue that the modern permanent record,  
1508 unless there are substantive rules of the road that govern  
1509 how the modern permanent record is used, that will really  
1510 creating a situation where there is going to be car accidents  
1511 and pileups.

1512 As consumers become more aware of the threat of how a  
1513 modern permanent record can potentially be used in their  
1514 lives, I think we really enter a situation where it can chill  
1515 commerce, and really chill people's lives and inhibit them.

1516 A good example of this can be found through Cox  
1517 Communications. They offer a digital telephone service.  
1518 That digital telephone service is then subject to detailed  
1519 analysis, and what it does is it analyzes the numbers of, the  
1520 phone numbers that you call and who calls you. Well, there  
1521 is nothing wrong with that, but what if you have a family  
1522 member who is a deadbeat? What if you have a friend who is a

1523 deadbeat? What inference is drawn on you based on those  
1524 phone calls?

1525           So, what does that do to your permanent record, your  
1526 modern permanent record, and that is really the question that  
1527 we need to look at, and we need to answer, in terms of policy  
1528 creation.

1529           Thank you for your time, and I look forward to any of  
1530 your questions.

1531           [The prepared statement of Ms. Dixon follows:]

1532 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1533 Mr. {Boucher.} Well, thank you very much, Ms. Dixon,  
1534 and the committee's thanks to all of our witnesses for your  
1535 informative testimony today.

1536 I am going to ask a brief question, and I would  
1537 appreciate a brief answer. And I will ask each of you just  
1538 to respond to this in perhaps 15 seconds or less.

1539 Assuming that we adopt a set of new privacy protections,  
1540 should we apply those both with regard to online and offline  
1541 transactions? Ms. Dixon.

1542 Ms. {Dixon.} Yes, I believe you should, because the  
1543 offline collection of data is highly identifiable, and it can  
1544 include biometric information, name, health information, and  
1545 other information that is entirely unregulated.

1546 Mr. {Boucher.} Thank you. Ms. Bougie.

1547 Ms. {Bougie.} I would say it can't be a one size fits  
1548 all. Online information is different in many cases than  
1549 offline, and so, I would recommend that we just be very  
1550 cautious, because in the case of the small business, it would  
1551 really restrict our ability ultimately to prospect with web  
1552 searches and things like that.

1553 Mr. {Boucher.} So, you are not saying apply it online  
1554 only, you are just saying be careful about how you apply it  
1555 to both.

1556 Ms. {Bougie.} Be very careful, because again, the  
1557 unintended consequences of what--

1558 Mr. {Boucher.} I understand.

1559 Ms. {Bougie.} --would happen.

1560 Mr. {Boucher.} All right. Thank you. Ms. Strickland.

1561 Ms. {Strickland.} Yes. Wal-Mart does favor a  
1562 principle-based approach that doesn't focus on one particular  
1563 technology, and I think it is very hard to draw a line that  
1564 clearly separates online from offline.

1565 A lot of services now are both online and offline, so I  
1566 think a broader view is needed.

1567 Mr. {Boucher.} Okay. Ms. Barrett.

1568 Ms. {Barrett.} Yes, Chairman. I think the--

1569 Mr. {Boucher.} Microphone, please.

1570 Ms. {Barrett.} Can you hear me now?

1571 Mr. {Boucher.} Yes.

1572 Ms. {Barrett.} Okay. Yes, we think it should be not  
1573 limited to online, but a broader perspective, but I would  
1574 echo my colleagues' remarks about some of the nuances  
1575 regarding what is practical to do in an online world, and  
1576 what is not practical, or might need to be dealt with  
1577 differently in an offline world.

1578 Mr. {Boucher.} All right. Thank you. Mr. Pappachen.

1579 Mr. {Pappachen.} I would agree with the tenor of the

1580 comments so far, that convergence, as we have seen, would  
1581 dictate that we have a more broader application. The nuances  
1582 of the application should be carefully observed, but a  
1583 broader application is correct.

1584 Mr. {Boucher.} Okay. Mr. Hoofnagle.

1585 Mr. {Hoofnagle.} I think the answer is, it depends.  
1586 Offline data collection is a little different, and--

1587 Mr. {Boucher.} Microphone closer, please.

1588 Mr. {Hoofnagle.} My answer would be, it depends. It  
1589 depends on the substantive protections built into the bill,  
1590 and whether they are appropriate in the offline context.

1591 Mr. {Boucher.} All right. Mr. Hoofnagle, let me pose  
1592 my second question to you.

1593 You have performed, and we are aware of your study, that  
1594 as I understand it, finds that two-thirds of the American  
1595 public does not favor the receipt by them of tailored  
1596 advertising. And given the benefits of tailored advertising  
1597 that many on our panel have stressed here today, what do you  
1598 think we might be able to do, that could change that number,  
1599 and persuade more people that not only is it not harmful, but  
1600 perhaps even beneficial to the receipt of that advertising to  
1601 receive it?

1602 Mr. {Hoofnagle.} That is a great question, Mr.  
1603 Chairman.

1604 Mr. {Boucher.} And pull the microphone closer, please.

1605 Mr. {Hoofnagle.} We were surprised by the answer that  
1606 so many Americans say that they principally reject tailored  
1607 advertised, and troubled by that result, because it is clear  
1608 that tailored advertising does have advantages for consumers  
1609 and for businesses.

1610 But we think also that consumers might have a lot of  
1611 anxiety around information collection. They might not want  
1612 information collection in one context to follow them into  
1613 another. So, for instance, the targeted ads that you get at  
1614 home when you are using the Internet for personal purposes  
1615 might, consumers might not want that to bleed over to how  
1616 they use the computer in the workspace.

1617 I think that if there is greater transparency and rules  
1618 around data collection, it might change that number, and more  
1619 people might--

1620 Mr. {Boucher.} So, let me just cite an example. Let us  
1621 suppose that we adopt a law that says that any entity that  
1622 collect information from a customer, whether that collection  
1623 be online or offline, provide to the customer a thorough  
1624 description of what information is collected, a thorough  
1625 description of how that information is used, and then provide  
1626 an ability, through a series of opt-in and opt-out  
1627 arrangements, depending on what the information is, and how

1628 it is used, for that customer to be able to control the use,  
1629 or perhaps control the collection of the information itself.

1630 If we provide that set of consumer guarantees, what do  
1631 you think that might do to persuade more people that having  
1632 information collected for the purpose of tailored advertising  
1633 is, perhaps, advantageous to them, or at a minimum, have them  
1634 be willing to acquiesce in it?

1635 Mr. {Hoofnagle.} That is an interesting approach. I  
1636 would point out that our survey shows that people already  
1637 assume that there are opt-in standards in place. Americans  
1638 assume that they have a right of confidentiality in the  
1639 marketplace.

1640 Mr. {Boucher.} So, they are making that assumption,  
1641 even when two-thirds of them say they don't want the tailored  
1642 advertising.

1643 Mr. {Hoofnagle.} That is right, and they are--

1644 Mr. {Boucher.} And if they knew the truth, that they  
1645 really didn't have even the measure of control they think  
1646 they do, that two-thirds number might even be higher is what  
1647 you are saying.

1648 Mr. {Hoofnagle.} I think that consumers have a lot of  
1649 anxiety in this area, and that might be one of the reasons  
1650 why they are expressing that level of objection.

1651 My collaborator and I, Joseph Turow at the University of

1652 Pennsylvania, argued that notice and opt-out might not be the  
1653 most optimal approach, because consumers do not read privacy  
1654 notices. They already assume that protections are in place.  
1655 Opt-out, too, can be problematic. We argued that  
1656 policymakers--

1657 Mr. {Boucher.} You mean opt-in can be problematic?

1658 Mr. {Hoofnagle.} Opt-in can be manipulated as well, and  
1659 in fact, we explicitly said that the right answer is not just  
1660 to go to opt-in. We discussed the idea of there being  
1661 mandatory retention ceilings, so that information would have  
1662 to be deleted after a certain amount of time.

1663 Mr. {Boucher.} After a certain period of time.

1664 Mr. {Hoofnagle.} And that would allow targeted  
1665 advertising, but it wouldn't allow kind of a permanent  
1666 profile.

1667 Mr. {Boucher.} Let us suppose, just for the sake of  
1668 this question, that we do those things, and that we have  
1669 retention limits, full disclosure, a set of opt-in and opt-  
1670 out opportunities to control what happens, do you think that  
1671 instills a greater amount of confidence in the American  
1672 public that the online experience is secure, and to the  
1673 extent that they are engaging in offline transactions, that  
1674 they have more control over their privacy?

1675 Mr. {Hoofnagle.} I think it would. It would--

1676 Mr. {Boucher.} Do you think it might enhance commerce,  
1677 if we did such a thing?

1678 Mr. {Hoofnagle.} Yes, sir. I think it would be--

1679 Mr. {Boucher.} All right. My time has expired.

1680 Mr. {Hoofnagle.} Okay.

1681 Mr. {Boucher.} Thank you for your answers. Those are  
1682 very helpful. Mr. Radanovich.

1683 Mr. {Radanovich.} Thank you, Mr. Boucher. And  
1684 appreciate the panel of witnesses. Earlier, in my opening  
1685 testimony, I talked about, there was one point that, you  
1686 know, people, about the delivery of a catalog to your  
1687 doorstep, and I expounded on a little bit extemporaneously,  
1688 because I remember in the past, where the holidays would come  
1689 around, or an event would happen in my family, and all of a  
1690 sudden, you don't have one magazine or a catalog, you have  
1691 got 10 or 15. Incredibly frustrating.

1692 And what was more frustrating was the hassle it was to  
1693 get these people to shut it down, if that is, because I  
1694 didn't want them, and it just didn't--and I know that my  
1695 following question will not speak to the issue of the  
1696 collecting of private data, but it does speak to the issue of  
1697 a person's ability to control what happens in their home.

1698 And so, I want to ask each member of the panel. You  
1699 know, I don't want to interrupt free commerce and trade, and

1700 as long as the boundaries are proper, I think it is good.  
1701 But I am all for, in a number of ways, making sure that a  
1702 family's home, to be politically correct, is its castle, and  
1703 that the people in their homes have as much ability to  
1704 control what drops on their doorstep, what pops up on their  
1705 video, you know, their computer screen and such.

1706         Can you, is there anybody that can explain to me ways  
1707 that the industry could look to provide people with, really,  
1708 a lot of ease in their households, to be able to shut this  
1709 stuff down if they want to? I mean, I have got to think, if  
1710 I was the father of a new child, I may or may not appreciate  
1711 the fact that I got a hundred catalogs in there, on how to  
1712 buy a baby crib, and want to shut it down. But if I shut it  
1713 down, I might think oh, gosh, maybe I do want that  
1714 information. I would like to see that control in the home.

1715         Has anybody given any thought to how you can shut that  
1716 down, or ways to make it easier to do that? And I will just  
1717 open it up to the panel.

1718         Ms. Barrett, if you would.

1719         Ms. {Barrett.} Yes. I would point to the new self-  
1720 regulatory guidelines that the Direct Marketing Association  
1721 put into place last year, where you can go to their website,  
1722 and you can opt out from all marketing communications, or you  
1723 can pick certain companies that you can, even if you have a

1724 customer relationship with that company, and say I don't want  
1725 to receive marketing communications from you.

1726 I think this is a big step in the right direction, and  
1727 one that is probably not as well known as it ought to be.

1728 Mr. {Radanovich.} And it is not as well known as it  
1729 ought to be, if I heard that right.

1730 Ms. {Barrett.} Correct.

1731 Mr. {Radanovich.} Correct. Yes. Ms. Dixon.

1732 Ms. {Dixon.} Thank you very much. The self-regulatory  
1733 approach has merit. The problem is, is that it is just the  
1734 good companies that are following the rules that typically  
1735 join the self-regulatory efforts. And they are always the  
1736 ones who, you know, you call and they stop sending the  
1737 catalogs.

1738 It is the bad actors, and that is why I think that a  
1739 broader approach could be very useful in really curtailing  
1740 this.

1741 Mr. {Radanovich.} A more regulatory approach.

1742 Ms. {Dixon.} That is correct.

1743 Mr. {Radanovich.} Yeah.

1744 Ms. {Dixon.} And I think that one of the things to look  
1745 at is looking at some data rights that are not identical to  
1746 the Fair Credit Reporting Act, because it would be  
1747 extraordinarily complex to do, but look at that, and saying

1748 what can we learn from that statute and apply to this area?  
1749 Is there a way that consumers could have a regular, you know,  
1750 standardized way of finding out what lists they are on, and  
1751 seeing that information, making sure it is accurate, seeing  
1752 that it is not retained for the duration of their lives, and  
1753 so on and so forth.

1754 I think that that approach would require a lot of  
1755 discussion and very serious thought, but has merit.

1756 Mr. {Radanovich.} Okay. Thank you. Ms. Bougie, I  
1757 wanted to ask you a couple of questions. In your testimony,  
1758 you mentioned the one size fits all approach to this whole  
1759 thing. Do you have any suggestions on what appropriate  
1760 regulation might be, then, if it is not one size fits all?

1761 Ms. {Bougie.} Well, our concern for the one size fits  
1762 all approach is that the business concerns of small business  
1763 are, excuse me, sorry.

1764 Mr. {Radanovich.} There you go.

1765 Ms. {Bougie.} Our concern with the one size fits all  
1766 approach is that business concerns of a small business are  
1767 vastly different from those of a large corporation. So, this  
1768 narrow view would restrict us, with very few options.

1769 The online options help, because it helps level the  
1770 playing field. And if regulations restrict online behavior  
1771 as an advertising option, or the ability to prospect or gain

1772 email addresses, we will be left basically, our list will  
1773 slowly, slowly go away.

1774 Mr. {Radanovich.} Right.

1775 Ms. {Bougie.} But I believe by allowing voluntary  
1776 privacy standards with marketing data to continue, and we  
1777 focus on the regulations of financial and medical, that it is  
1778 going to be more advantageous for small business, and allow  
1779 technology to prosper as it should.

1780 Mr. {Radanovich.} Okay. Ms. Strickland.

1781 Ms. {Strickland.} Thank you very much. I also would  
1782 like to echo her remarks about the one size fits all, and I  
1783 think that is true, not just for small companies and large  
1784 companies, but this debate we are having about online and  
1785 offline as well. So, as we think about what appropriate  
1786 notice is, that will be different on a website than, as you  
1787 might imagine, in a store. You are not going to have the  
1788 ability to have the depth and level of information in a store  
1789 notice, necessarily.

1790 So, as we think about how do we do a principle-based  
1791 approach, how do we make it flexible enough that it will work  
1792 in a variety of contexts, a variety of technology, and a  
1793 variety of companies.

1794 Mr. {Radanovich.} All right. Thank you.

1795 Mr. {Pappachen.} I would just add that, two things.

1796 One thing, consumer expectation with regard to medium should  
1797 play a role when you are looking at the issue of notice  
1798 and/or consent. The second thing is, I think businesses, who  
1799 are in business because they are effective at communicating  
1800 certain messages to consumers towards the ends that they  
1801 want, should be involved in the process, towards the ends  
1802 that we are looking at here.

1803 Mr. {Radanovich.} All right. Thank you very much.

1804 Thank you. Thank you, Mr. Chair.

1805 Mr. {Boucher.} Thank you, George. Mike?

1806 Mr. {Doyle.} [Presiding] Ms. Barrett, I understand  
1807 your company, Acxiom, has roughly 1,500 pieces of data on  
1808 every American. So, I am a male, I live in Pittsburgh, I am  
1809 56 years old. That is three data points, three pieces of  
1810 information about me. That means there is roughly 1,497 data  
1811 points left.

1812 So, just between you and me, what else do you know about  
1813 me?

1814 Ms. {Barrett.} Good question, and I appreciate your  
1815 asking it. When we talk about 1,500 potential data points,  
1816 what we are referring to is the different possibilities of  
1817 information we might have about an individual.

1818 And to give you an example, we have over 600 different  
1819 lifestyle and interest categories. No one has all 600

1820 variables. I happen to like to bicycle and cook and read, so  
1821 that is 3 out of 600 for me.

1822 Mr. {Doyle.} So, that is all part of the 1,500.

1823 Ms. {Barrett.} So, that is all part of the 1,500.

1824 Mr. {Doyle.} Okay.

1825 Ms. {Barrett.} So, I would say an average person may  
1826 have 20 or 30 or 40.

1827 Mr. {Doyle.} Let me ask you some more questions, and  
1828 they are just simple yes or no answers. So, could you send  
1829 me a statement with everything you know about me?

1830 Ms. {Barrett.} We offer access to the data. We have  
1831 two kinds of data. We have data that we use for marketing,  
1832 and data we use for identity management and risk decisions.  
1833 And the answer to your question is yes, for the data in the  
1834 risk decision category, and we will send you a summary of the  
1835 data in the marketing category.

1836 Mr. {Doyle.} So, could I log onto your website and see  
1837 what others know about me, and what you sell to other people  
1838 about me?

1839 Ms. {Barrett.} No, we do not.

1840 Mr. {Doyle.} No, that is fine. No is fine. Can I log  
1841 onto your website, or can you send me a letter telling me who  
1842 you sold my information to?

1843 Ms. {Barrett.} I am sorry, who sold?

1844 Mr. {Doyle.} Who you sold my information to? Could you  
1845 tell me who you sold my information to?

1846 Ms. {Barrett.} We do track all of the sales that we  
1847 make.

1848 Mr. {Doyle.} But could you give me that information?  
1849 If I wanted to know who you sold my information to.

1850 Ms. {Barrett.} We do not provide that information to  
1851 consumers.

1852 Mr. {Doyle.} Thank you. Can I choose to delete certain  
1853 information that you have about me if something is old or out  
1854 of date, or doesn't apply to me anymore?

1855 Ms. {Barrett.} Yes.

1856 Mr. {Doyle.} And how would that process work? How  
1857 would I go in there and do that?

1858 Ms. {Barrett.} You would contact us, and ask if it is  
1859 the marketing data, you would ask for the data to be deleted,  
1860 and actually, we will remove the entire record, if you wish.  
1861 On the risk side of the house, you can do it element by  
1862 element, and pick and choose the elements that you wish to  
1863 have corrected.

1864 Mr. {Doyle.} Very good. So, I can be completely  
1865 removed from your database if I want, every trace about me  
1866 gone, if I just call you and say I want everything you have  
1867 about me erased. I can do that?

1868 Ms. {Barrett.} You can do that for our marketing  
1869 products. We do not allow you to erase or remove all the  
1870 data from our risk products. Those are the ones, and  
1871 identity management products. Those are the products that  
1872 catch the bad guys, and we don't let the bad guys opt out of  
1873 that data.

1874 Mr. {Doyle.} So, tell me, I am curious. Where do you  
1875 get all the information you have about me? Where does it all  
1876 come from? Where do you get it from?

1877 Ms. {Barrett.} It comes from three primary sources.  
1878 The first is public records and publicly available  
1879 information. The second is surveys that consumers fill out,  
1880 and volunteer information about their interests and life.

1881 Mr. {Doyle.} Like warranty cards?

1882 Ms. {Barrett.} Warranty cards is just one small part.  
1883 And the third category is information from companies that  
1884 have a relationship with you, and have given you notice and  
1885 choice about the fact that your data may be shared with  
1886 another party, a third party like Acxiom.

1887 Mr. {Doyle.} So, do you sell medical or other sensitive  
1888 information that is attached to personally identifiable  
1889 information? Do you sell that?

1890 Ms. {Barrett.} We do not sell what we call sensitive  
1891 information in any of our marketing products. Medical data,

1892 unless it is self-reported by the consumer, we would have no,  
1893 personal health information is regulated by HIPAA in any of  
1894 our marketing products.

1895 Mr. {Doyle.} What is the minimum information you need  
1896 to identify someone? How many data points do you need to  
1897 identify someone?

1898 Ms. {Barrett.} A name and address would be the  
1899 baseline.

1900 Mr. {Doyle.} So, with two data points, you can pretty  
1901 much identify anyone?

1902 Ms. {Barrett.} Well, we can, it depends on what we are  
1903 using that information for. If we are using it for  
1904 marketing, that may be sufficient to say we don't want to  
1905 market to this person or we do.

1906 If we are actually using data for an identity  
1907 application, we would need more data points--

1908 Mr. {Doyle.} I see.

1909 Ms. {Barrett.} --to verify that you are who you really  
1910 claim to be.

1911 Mr. {Doyle.} Tell me, do you audit the companies that  
1912 buy the information from you? I mean, do you make sure they  
1913 lock it up properly, that they use it for what they say they  
1914 want to use it for?

1915 Ms. {Barrett.} For any company that buys any kind of

1916 sensitive data from us, we do both an onsite inspection, and  
1917 an audit of their practices, to make sure that they are going  
1918 to treat that information responsibly. For data, for  
1919 companies that buy non-sensitive information from us, we go  
1920 through a credentialing process, which makes us comfortable  
1921 that that company is a legitimate entity, and that they will  
1922 respect the terms of our contract, and keep the information  
1923 confidential.

1924           Mr. {Doyle.} And our committee has had several hearings  
1925 about data security and online security. Have you had any  
1926 security breaches?

1927           Ms. {Barrett.} We had an incident back in 2003, where  
1928 one of our external servers was hacked. And we used it to  
1929 transport information back and forth between our clients.  
1930 But fortunately, we had had a policy on that server that any  
1931 sensitive information needed to be encrypted, and so, no  
1932 consumers were put at risk as a result of that incident.

1933           Mr. {Doyle.} How would you inform a consumer whose  
1934 information had been compromised? What would your procedure  
1935 be?

1936           Ms. {Barrett.} Well, it would--

1937           Mr. {Doyle.} Or do you do it?

1938           Ms. {Barrett.} Well, it would depend on whose data the  
1939 information was. If it was Acxiom's data, because we have

1940 both our own data products that we sell in the marketplace,  
1941 and we also provide computer services for clients, who are  
1942 hosting and housing their data on our computers. If it was  
1943 Acxiom's data, we would be responsible for the notification.  
1944 If it was client's data, we would work with that client, to  
1945 make sure the consumers were notified.

1946         Mr. {Doyle.} Thank you. Just one final question, for  
1947 Mr. Dixon and, I am sorry, Ms. Dixon and Mr. Hoofnagle. It  
1948 is clear that vast amounts of personal information about  
1949 individual consumers are collected, aggregated, analyzed, and  
1950 sold for a variety of commercial purposes.

1951         In response, some people say so what. If a person likes  
1952 to ski, but is mistakenly identified in the database as an  
1953 angler, and received offers or coupons for fishing equipment,  
1954 what is the harm? Ms. Barrett recommended, in her written  
1955 testimony, that before we engage in additional regulation, we  
1956 should articulate the extent of the harm.

1957         So, I want to ask Ms. Dixon and Mr. Hoofnagle, can you  
1958 please answer that question? Where is the harm to the  
1959 consumers? And also, I want to give you a chance to maybe  
1960 just react to my line of questioning to Ms. Barrett, and  
1961 whether you have any thoughts on that. If you think this is  
1962 what Americans expect, and what kind of rules of the road do  
1963 you think we should put in place?

1964 Mr. {Stearns.} That is a lot of questions.

1965 Mr. {Doyle.} I know, and I am going to get to you,  
1966 Cliff, and be mighty generous with your time. Go ahead.

1967 Ms. {Dixon.} Thank you for your question.

1968 A couple of thoughts. First, I want to talk about the  
1969 harm, and then, I would like to respond to the line of  
1970 questioning.

1971 Mr. {Doyle.} Yes.

1972 Ms. {Dixon.} Your question. The one thing is that is  
1973 quite clear is that the companies, when they discuss these  
1974 issues, you will hear companies talk about the benefits of  
1975 having this information available. And there is no question  
1976 that there are benefits. I don't think anyone is arguing  
1977 about the benefits. We know there are benefits.

1978 The problem is, is that there are, indeed, also harms.  
1979 So, for example, it is the shadow side of all of this. The  
1980 same information, we saw it on badcustomers.com database, the  
1981 same information that is used to target advertising is also  
1982 used to deny transactions of consumers who have done,  
1983 disputed charges.

1984 So, you have the same information being used for  
1985 completely different purposes. Once the information is  
1986 compiled, you really lose the ability to determine how that  
1987 information will be used, and in all the contexts that it

1988 will be used, unless it is covered under the Fair Credit  
1989 Reporting Act. But what we have been talking about here  
1990 today are all non-FCRA uses of the data, and also, all non-  
1991 HIPAA uses of the data. So, it is really outside of  
1992 regulation.

1993           The second thing would be inaccuracies, outdated  
1994 information, and again, incorrect inferences. I think that  
1995 when you have these very clear pictures of consumers, you  
1996 really do get locked into a bit of a pictorial box. Here is  
1997 what consumer X or Y looks like. Here is how we are going to  
1998 treat this consumer.

1999           We are familiar with the situation where people were not  
2000 allowed to vote because they landed in certain databases.  
2001 Some of this information was incorrect. So, we are talking  
2002 about substantive rights that can be impacted here. So, it  
2003 is the picture of the consumer. Is this the right picture?  
2004 If it is not, how do we correct that?

2005           Mr. {Doyle.} I am so far over my time. I am just going  
2006 to ask Mr., for a quick response, and then we will get to the  
2007 next witness.

2008           Mr. {Hoofnagle.} I will be quick. I would turn the  
2009 harm question around, and say, and ask retailers questions  
2010 like why are they trying to re-identify consumers without  
2011 telling them about it?

2012           So, I detailed in my testimony the example of one  
2013 company that will ask for your zip code at the register. If  
2014 you give your zip code, they will combine it with your name  
2015 from a credit card swipe, and then, they will go out and get  
2016 your home address. Why not just ask the consumer can we have  
2017 your home address? The fact that so much of this data  
2018 collection occurs in secrecy, I think is, speaks to the harm  
2019 issue.

2020           Mr. {Doyle.} Thank you very much. My time has long  
2021 since expired, and I am going to yield now to my good friend  
2022 from Florida, Mr. Stearns.

2023           Mr. {Stearns.} I thank you, Mr. Chairman. I just  
2024 compliment you on your rapid fire questions. You got a lot  
2025 of questions in there, and I am impressed.

2026           I went to Drudge and I deleted all my cookies, and so, I  
2027 came back the next day to go on Drudge, and it wouldn't go  
2028 forward until it allowed me to put these cookies back on. I  
2029 had to put on 17 cookies.

2030           I went to the Gmail to do my Gmail, and I deleted all  
2031 the cookies. Same thing happened there. So, that is an  
2032 awful lot of cookies that I don't know what is going on, and  
2033 this is for George Pappachen.

2034           In your testimony, you mentioned the use of passive  
2035 tracking technology, including cookies, in current studies.

2036 I guess your holding company is WPP, is that it? Yeah. Use  
2037 these passive tracking technologies. What do these tracking  
2038 technologies do? I am a consumer. You are tracking my  
2039 cookies. So, what are you looking for, and is the  
2040 information you get useful, and what is it?

2041 Mr. {Pappachen.} Right.

2042 Mr. {Stearns.} Just pull the mike up a little closer.

2043 Mr. {Pappachen.} Sure. Passive tracking technologies  
2044 can be utilized in different ways. A couple of the ones that  
2045 I cited in my written testimony is, one, ad exposure, the  
2046 fact that you were exposed to a certain ad.

2047 Mr. {Stearns.} Can you tell that from a cookie, that I  
2048 was exposed to an ad?

2049 Mr. {Pappachen.} Yes, you can tell which ad you--

2050 Mr. {Stearns.} So, when I get an ad on Drudge for a car  
2051 or for a book, that is based upon my previous search engines  
2052 on Drudge or Google, and so, you get from those cookies, you  
2053 read those cookies and say, okay, Stearns went to Amazon.com,  
2054 he went to these sites and these sites. You find that all  
2055 out.

2056 Mr. {Pappachen.} Right. Well, it wouldn't be as far as  
2057 going to search, or there might be some categories where you  
2058 might not have availability to track or know what the  
2059 consumer engagement was, but there are, on a larger scale,

2060 there is the practice of tracking exposure to advertising, so  
2061 that you are not burdened with excessive advertising of the  
2062 same kind, or--

2063 Mr. {Stearns.} And you sell this to the advertisers to  
2064 tell them, this is how effective you were or not?

2065 Mr. {Pappachen.} Right. So the idea is to understand  
2066 how they performed, whether we are being relevant or not,  
2067 similar to how we would do it with TV, or in another forum.

2068 Mr. {Stearns.} As a customer, do you make the  
2069 customers aware of this? In other words, let us say you are  
2070 doing this on me, how would I find out that you are doing it,  
2071 and what you are doing?

2072 Mr. {Pappachen.} Sure. One thing we have been actively  
2073 encouraging and working on is proactive privacy. The Privacy  
2074 Icon project that we were involved in is about allowing for  
2075 an enhanced notice to consumers. That then gives them  
2076 disclosure.

2077 Mr. {Stearns.} But you are not now doing it.

2078 Mr. {Pappachen.} It is a self-regulatory initiative  
2079 that is underway. We are definitely doing the best standards  
2080 or best practices of informing about our practices within  
2081 privacy policies and wherever else we can, but we are  
2082 encouraging that the industry absorb an enhanced notice under  
2083 a self-regulatory framework, that allows for disclosure that

2084 may be more relevant to them, that we were being told is  
2085 important for consumers.

2086         So, we are trying to respond in a way that allows for  
2087 consumers to have transparency, but then allows for business  
2088 to have, work in the way that it traditionally has, to be  
2089 effective in their communications.

2090         Mr. {Stearns.} You know, we tried to pass a spyware  
2091 bill here in the Energy and Commerce. We just couldn't get  
2092 the Senate to agree. And within that spyware, there was a  
2093 study that Mr. Dingell put in to look at cookies and the  
2094 impact.

2095         Do you think the privacy bill should have anything  
2096 applicable to cookies that come into the computer?

2097         Mr. {Pappachen.} I think that, regulating technology is  
2098 a tricky thing, as we have often heard.

2099         Mr. {Stearns.} That is what I mean, yeah.

2100         Mr. {Pappachen.} I don't think technology is  
2101 necessarily the enemy. I think we can talk about the uses of  
2102 it. I think we can talk about how we disclose how we are  
2103 using it. We can talk about how we give over the levers of  
2104 control about how we can use it.

2105         Mr. {Stearns.} You said, you discussed a technology  
2106 developed in 2007, one of your subsidiaries, Safecount, that  
2107 allows users to see not only what tracking cookies are on

2108 their computer, but what data they are collecting, but also,  
2109 where the tracking cookies came from. So is that in  
2110 practice, that Safecount, is that being used?

2111 Mr. {Pappachen.} That is right. Consumers can have  
2112 insight into what cookies there are on their browser, from  
2113 Safecount, and also, which ad it was spawned from.

2114 Mr. {Stearns.} Has this Safecount program been given to  
2115 other companies, besides WPP?

2116 Mr. {Pappachen.} It certainly could be. It is a, what  
2117 I said in my written statement is that we have seen other,  
2118 larger actors now going in that direction. It was in support  
2119 of the idea that self-regulation can work.

2120 We have seen other actors going towards providing access  
2121 to the interests and profiles that they build online, and  
2122 letting consumers have some control over whether those  
2123 interests are built, and what those interest groups, they  
2124 would want to belong to or not.

2125 Mr. {Stearns.} Do you think we should prevent spyware?

2126 Mr. {Pappachen.} I am sorry, sir. I didn't get the  
2127 last part.

2128 Mr. {Stearns.} Do you think we should prevent spyware,  
2129 in Congress?

2130 Mr. {Pappachen.} I think spyware by, again, it would  
2131 matter what we define as spyware, but spyware, if it means

2132 something that consumers did not transparently get notice of  
2133 and consent to, and it engages in activity that that would  
2134 not want, yes, I think it should be prohibited.

2135 Mr. {Stearns.} Okay. Ms. Barrett, Mr. Doyle talked to  
2136 you about, he asked a series of questions, and he said will  
2137 you tell me this information, and you said, we will not tell  
2138 you information about risk product? Is that correct?

2139 Ms. {Barrett.} We will tell you. We will show you  
2140 exactly what we have in our risk and identity management  
2141 products, yes.

2142 Mr. {Stearns.} But he said, can I get all of it, and  
2143 you said no, I thought.

2144 Ms. {Barrett.} For the marketing products?

2145 Mr. {Stearns.} Yeah.

2146 Ms. {Barrett.} We offer a summary of the information,  
2147 not the details.

2148 Mr. {Stearns.} And some of the information you won't  
2149 provide, and why would that be? Because it is proprietary  
2150 information that you have developed, that you have a  
2151 proprietary interest in, is that, perhaps, why?

2152 Ms. {Barrett.} No, it is the fact that the information  
2153 is not commonly requested at an individual level, and so, we  
2154 have not put the systems in place to go retrieve it, and look  
2155 at it on one person. Marketing applications look at the data

2156 in thousands or tens of thousands or millions of records at a  
2157 time.

2158           Mr. {Stearns.} He had also asked a question about  
2159 regulating online collection and use of data, should be clear  
2160 about the extent of the harm we are seeking to address. Do  
2161 you believe that harm exists in online data collection, or is  
2162 it a risk of harm?

2163           Ms. {Barrett.} I think that there is the potential for  
2164 harm in almost any data collection. I think it speaks to how  
2165 do we use information, and where can we define risk under, in  
2166 certain uses, and then, how can we develop guidelines that  
2167 either prevent or mitigate against that risk, relative to  
2168 that use?

2169           And for example, I might point out some of the self-  
2170 regulatory guidelines that have been put in place. For  
2171 instance, for marketing, by the Direct Marketing Association  
2172 and the Internet Advertising Bureau, and the Network  
2173 Advertisers Initiative. Those are three different groups  
2174 that have defined different kinds of guidelines, relative to  
2175 different marketing activities.

2176           Mr. {Stearns.} This is the last question, Mr. Chairman.  
2177 This is the more tough, you know, here we are trying to  
2178 legislate a privacy bill. What harm should this privacy bill  
2179 address, then? I mean, can you say that concisely?

2180 Ms. {Barrett.} Well, I think that is the challenge, is  
2181 defining exactly what are the harms that--

2182 Mr. {Stearns.} Yeah.

2183 Ms. {Barrett.} --consumers are at risk of.

2184 Mr. {Stearns.} Yeah.

2185 Ms. {Barrett.} My panelist down here, Ms. Dixon,  
2186 mentioned some of the things, in terms of denying consumers  
2187 substantive benefits, and I think that might be an area to  
2188 explore. It is certainly not an area that we see in the  
2189 marketing arena, but information that is used outside of  
2190 simply trying to reach you with a relevant communication well  
2191 might present some harms to the consumers. And those should  
2192 be explored.

2193 Mr. {Stearns.} Thank you, Mr. Chairman.

2194 Mr. {Doyle.} Thank you, Mr. Stearns. The chair now  
2195 recognizes Mr. Inslee.

2196 Mr. {Inslee.} Thank you, Mr. Hoofnagle. I was looking  
2197 at a document attached, I think to your testimony from the  
2198 Vente Company, which shows lists of, is this your  
2199 information?

2200 Mr. {Hoofnagle.} It is.

2201 Mr. {Inslee.} Yeah. So, it shows this company, it  
2202 appears that they sell lists of people who have certain  
2203 conditions. So, cancer prostate, it shows they have 125,400

2204 names of people who have cancer of the prostate.

2205           Is that, do I read this right? This company will tell  
2206 you who has cancer of the prostate?

2207           Mr. {Hoofnagle.} I think you are referring to two  
2208 different portions of my appendix here. One is the ailments,  
2209 diseases, and illness sufferers mailing list, which is sold  
2210 by a company that is a member of the Direct Marketing  
2211 Association.

2212           The Vente list is the addiction responders list, and it  
2213 advertises who is struggling with an addiction to gambling,  
2214 sex, or food. Who just can't say no to drugs, alcohol, or  
2215 tobacco. Millions of America, and Vente has them.

2216           Mr. {Inslee.} So, Vente has the names of people who  
2217 have had an alcohol problem, then, and they sell those names,  
2218 is that right?

2219           Mr. {Hoofnagle.} That is what their advertising claims.

2220           Mr. {Inslee.} And typically, where do they get the  
2221 information that a person has had an alcohol problem?

2222           Mr. {Hoofnagle.} The sources are likely to be self-  
2223 reported. So, for instance, if a consumer fills out a  
2224 survey, and checks a box saying that I have struggled with  
2225 alcoholism, that is information that could be bundled and  
2226 resold, in this type of context. It would not come, for  
2227 instance, from a healthcare provider. So, this would be, it

2228 could be a product loyalty card, that is associated with  
2229 purchases, or self-reported data.

2230 Mr. {Inslee.} So, let me ask you about the other  
2231 document. Let us talk about cancer of the prostate. This  
2232 other document suggests that there is a database of people  
2233 suffering from a wide variety of ailments, diseases,  
2234 illnesses, and medical conditions. Included are cancer of  
2235 the prostate, there is 125,400 names, as I understand that.

2236 Does this group sell names of people with that  
2237 condition?

2238 Mr. {Hoofnagle.} This information is personally  
2239 identifiable. So, it is name and address, and then, if you  
2240 look along the right hand side at the first page, there are  
2241 what are known as selects, which means that for extra money,  
2242 you can buy their age, ethnicity, sex, whether they are a  
2243 homeowner, et cetera.

2244 Mr. {Inslee.} And where, typically, would this company  
2245 have received the information, the personally identifiable  
2246 information of the people who have cancer of the prostate?

2247 Mr. {Hoofnagle.} With respect to this list, its  
2248 provenance is claimed to be a lifestyle questionnaire. So,  
2249 an example would be, you are walking through the mall and  
2250 someone stops you and says, will you fill out this survey,  
2251 and we will give you a gift card, or we will give you

2252 something free. If you fill out that survey, it could end up  
2253 in a database like this, and there is no right to notice.  
2254 They don't have to give you notice that they are selling the  
2255 data. They don't have to give you access, et cetera.

2256 Mr. {Inslee.} So, they don't have to tell you that it  
2257 could be used by someone who has got a grudge against you,  
2258 and wants to publicly divulge that information to embarrass  
2259 you, then.

2260 Mr. {Hoofnagle.} That is really unlikely in this  
2261 context?

2262 Mr. {Inslee.} Because?

2263 Mr. {Hoofnagle.} This information is sold in bulk. If  
2264 you look at the terms, it says \$150/m, which means that it is  
2265 1,000 names for \$150. You could not say to these companies,  
2266 I would like to know whether Chris Hoofnagle is in the cancer  
2267 list.

2268 Mr. {Inslee.} Why not? Why couldn't somebody say give  
2269 me \$10,000 and tell me all you got on Mike Doyle? Could they  
2270 legally do that?

2271 Mr. {Doyle.} It wouldn't be worth that much money.

2272 Mr. {Hoofnagle.} These companies are not set up to, at  
2273 least this type of company, is not architected to sell  
2274 information about a specific individual.

2275 Now, with respect to the pizza delivery exhibit that I

2276 provided, where Merlin Data is selling identifiable  
2277 information about people's homes, their unlisted phone  
2278 numbers, their cell phone numbers, et cetera, that is very  
2279 different. That is when you say, this is a situation where  
2280 you say I want information about a specific individual. Do  
2281 you have it?

2282 Mr. {Inslee.} Thank you. I believe, Ms. Barrett, you  
2283 were Acxiom. Do I have, yes, I am sorry. So, you show a  
2284 document, I am looking at the health buying activity, and  
2285 they show various codes I am looking. Code 6437 is for  
2286 health, female wellness. Code 6436 is health, diet/weight  
2287 loss. What would be the information to generate people's  
2288 inclusion in those codes? Where would you generate that  
2289 information?

2290 Ms. {Barrett.} It would come from self-reported or  
2291 survey information, where the consumer has indicated that  
2292 they have an interest in information about that topic. And  
2293 for the surveys that we use, we require that there be a  
2294 notice that the information will be used for marketing  
2295 purposes to other parties, and give the consumer the chance  
2296 to opt out of that, or to come to directly to us, and say I  
2297 don't want you to use that information.

2298 Mr. {Inslee.} So, if a person visited a website selling  
2299 a weight loss product, could their visit to the website, to

2300 their opening that page, end up being coded on this in some  
2301 fashion?

2302 Ms. {Barrett.} I don't believe so.

2303 Mr. {Inslee.} And what leads to a little question about  
2304 that in your mind?

2305 Ms. {Barrett.} Well, I am not, I would have to go back  
2306 and look at all the individual sources that contribute to  
2307 that.

2308 Mr. {Inslee.} So, is there any legal, let me ask the  
2309 panel in general. Is there any legal prohibition at the  
2310 moment, if a person visits a weight loss website, that  
2311 provides weight loss services or products. Let us say a  
2312 person just visits the website, opens the page. Is there any  
2313 legal prohibition of that owner of that page disseminating to  
2314 a data information service the fact that this computer, this  
2315 identified computer, has visited that site, and then that  
2316 data collector, being able to collect, if they have some  
2317 connection to an individual, connecting that to the data. Is  
2318 there any legal prohibition on that happening right now?

2319 Ms. {Barrett.} There is no legal prohibition, but  
2320 industry code or conduct, as well as the Direct Marketing  
2321 Association Code, calls for the disclosure of that practice  
2322 to the consumer, and at least in a privacy policy, if not  
2323 more boldly on the page, and then, the chance for the

2324 consumer to opt out of that disclosure to another party.

2325 Mr. {Inslee.} Ms. Dixon, did you--

2326 Ms. {Dixon.} Thank you. It is a good question. There  
2327 is no legal requirement for that to happen. And one of the  
2328 more troubling issues with websites is that they are very  
2329 compelling. You can take, for example, Facebook surveys,  
2330 where especially children, teens, and young adults will just  
2331 go in, and they are very inured to giving out certain  
2332 information, such as about anorexia and other, you know,  
2333 topics they talk about online now.

2334 They will give the information out, and these notices  
2335 can be quite small, and they don't see them. And then, their  
2336 information gets sold. So, it is not just that you visited a  
2337 weight loss website. It is that you visited the site, then  
2338 you filled out your name and, perhaps, gave them your email,  
2339 and then, that can be further associated downstream, and used  
2340 in collaboration and linked with other data.

2341 But in some cases, the information is so identifiable,  
2342 it doesn't even need to be linked. When you look at these  
2343 really scary lists of ailments, you have prostate cancer, the  
2344 mental health lists, these people are known by name, because  
2345 they have freely given their name.

2346 And one of the really difficult questions, I think, that  
2347 this committee faces is that the opt-in opt-out model is very

2348 challenging, because it is so challenging to educate  
2349 consumers about well, what does giving your name on such a  
2350 website actually mean to you? Are you opting in? Do you  
2351 really know what you are opting into? Because, for example,  
2352 the mental health lists. Those people gave that information  
2353 up in some way, typically, through some kind of website or  
2354 survey or a sweepstakes. And did they really, truly know and  
2355 comprehend the full consequences of their actions? It is a  
2356 tough question.

2357 Mr. {Inslee.} Thank you very much.

2358 Mr. {Doyle.} Thank you, Mr. Inslee. The chair  
2359 recognizes Mr. Rush.

2360 Mr. {Rush.} Thank you, Mr. Chairman. I just have some  
2361 questions. I know that the time is quickly passing by, and I  
2362 just have some questions for the panel. Now I, something  
2363 that I will just ask Professor Hoofnagle about this, some  
2364 questions.

2365 Professor Hoofnagle, we don't need to look at any  
2366 further than Acxiom's data products catalog or the Nextmark  
2367 website referenced in your testimony, to see that companies  
2368 are collecting and selling personal information about  
2369 individuals, that many Americans consider sensitive, such as  
2370 their race, ethnicity, religious affiliation, and political  
2371 affiliation, not to mention information on a wide range of

2372 sensitive health topics and medical conditions, including  
2373 addictions, sexual dysfunction, viral disorders, body odor,  
2374 obesity, infertility, and menopause. This list can go on and  
2375 on and on. A lot of sensitive information. Are any topics  
2376 off limits for commercial use, or is the general rule that if  
2377 information exists, collect and sell it?

2378         The next question is, if we can agree that some  
2379 categories of data should be off limits, or require  
2380 heightened levels of consumer consent, how do we define that  
2381 category of sensitive data?

2382         Mr. {Hoofnagle.} Mr. Chairman, those are two very good  
2383 questions. If I could address the second one first. I have  
2384 tried to move away from the opt-in opt-out question, because  
2385 framing rights in that way can easily be manipulated. It is  
2386 easy to trick people into opting in, and conversely, it is  
2387 easy to make it so people will not opt out.

2388         So, I have suggested several other interventions. One  
2389 is having the data disappear after a certain amount of time.  
2390 So, if you have an upward data retention limit is one way of  
2391 doing it. But there are other tools from the advertising  
2392 world that can be used.

2393         One example is advertiser liability. So, for instance,  
2394 in the telemarketing, spam, and junk fax laws, advertisers  
2395 can be liable if they hire spammers who, excuse me,

2396 advertisers can be liable if they send out, if they hire  
2397 someone to send out email that violates the CAN-SPAM law.

2398         In this context, you could create liability for people  
2399 who buy certain lists and abuse them. An example out of Iowa  
2400 is worth nothing. There was a list brokerage company there  
2401 that was selling a list known as ``elderly impulsive,' and  
2402 they were using it to take advantage of senior citizens who  
2403 had problems remembering, and as a result, were able to  
2404 architect a scam around that.

2405         The data seller, I think, should offer some due  
2406 diligence, especially when there are, using sensitive  
2407 personal information. And that can be in reviewing the  
2408 advertising that is ultimately disseminating, or in being  
2409 responsible if the advertiser ultimately uses the information  
2410 to take advantage of people.

2411         You know, with respect to your first question, the  
2412 general legal standard in the U.S. is that offline data  
2413 collection is not regulated by a specific federal privacy  
2414 law, except in certain areas. Your video rental records, for  
2415 instance, are protected. Your cable records are protected.  
2416 But between, in all the gaps left by the sectoral laws, there  
2417 is data collection even on sensitive personal information.

2418         Mr. {Rush.} Thank you. I yield back.

2419         Mr. {Doyle.} Thank you. Well, seeing no more members

2420 here, we want to thank all of our witnesses for their

2421 testimony today, and this hearing is adjourned.

2422 [The information follows:]

2423 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
2424 [Whereupon, at 3:00 p.m., the Subcommittees were  
2425 adjourned.]