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OFFICIAL TRANSCRIPT PROCEEDINGS

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

In the matter of: )  
 ) Matter No. R-511003  
FRANCHISE RULE )

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Monday, July 28, 1997

Federal Trade Commission  
6th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The above-entitled matter came on for meeting,  
pursuant to notice, at 9:10 p.m.

APPEARANCES:

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**P R O C E E D I N G S**

10 MR. TOPOROFF: Good morning. It is July 28th,  
11 1997 and we're meeting here in Washington, D.C. This is  
12 the first of six public workshop round tables to discuss  
13 the Franchise Rule and the Commission's advance notice of  
14 proposed rulemaking, which was published in the Federal  
15 Register this past February.

16 For the benefit of the stenographer, we are  
17 going to abbreviate advanced notice of proposed  
18 rulemaking as ANPR.

19 I am Steve Toporoff. I'm in the Division of  
20 Marketing Practices and I'm going to facilitate the  
21 meeting.

22 The topic for today is the sale of franchises  
23 and business opportunities at trade shows. I just want  
24 to mention that the meeting is open to the public. The

1 meeting is being recorded and a transcription will be  
2 made available and put on the public record and we also  
3 intend to post an electronic copy of the transcript on  
4 the Internet.

5 We have set aside this morning to discuss the  
6 issue of trade shows. However, we're prepared to stay  
7 and discuss the issue as long as necessary.

8 To the extent that there are members of the  
9 public who show up and wish to offer their comments, time  
10 will be allotted for that at the end.

11 Before we begin, I just also want to mention  
12 that there's going to be a meeting tomorrow. Unlike  
13 today's structured meeting, tomorrow's is open to the  
14 public to comment on any of the issues raised in the ANPR  
15 or the Franchise Rule. And by the way, that meeting will  
16 be in Room 238. We're not going to be meeting here.

17 I also want to remind everybody that the  
18 comment period has been extended until December 31st.  
19 So, anyone sitting at the table or anybody else still has  
20 time to either file a comment or supplement their  
21 comments. And of course, we welcome anybody to do so  
22 based upon the discussions here today.

23 And I also want to clarify a misconception  
24 about future workshops. It is not closed. In the

1 Federal Register notice, when we put in a July 1st  
2 deadline, that was tentative. Certainly, people can  
3 participate in the other public workshops as well. All  
4 that we ask is that you let us know and that you file a  
5 comment in advance.

6 So, with those opening remarks, we'll move on.

7 I want to introduce everybody or at least let  
8 everybody introduce themselves. So, we'll start with  
9 Carolyn.

10 MS. COX: I'm Carolyn Cox from the Bureau of  
11 Economics at the Federal Trade Commission.

12 MR. TOPOROFF: Again, Steve Toporoff, Division  
13 of Marketing Practices.

14 MS. HOWARD: Myra Howard, also Division of  
15 Marketing Practices.

16 MR. TOPOROFF: Mark?

17 MR. FORSETH: Mark Forseth with Jenkins and  
18 Gilchrist.

19 MR. TOPOROFF: Let me just interrupt a second.  
20 It would be also helpful for the participants to explain  
21 who they're representing here today.

22 MR. FORSETH: I'm speaking on behalf of CII  
23 Enterprises, which is a trade show promoter. as well as  
24 various franchisors including American FastSigns, Inc.,



1 Frullati Franchise Systems, Keller Williams Realty, Inc.,  
2 Schlotzsky's, Inc.

3 MR. TOPOROFF: Okay. Dale?

4 MR. CANTONE: I'm Dale Cantone from the Office  
5 of the Maryland Attorney General, Securities Division.

6 MR. WULFF: I'm Eric Wulff. I'm a partner with  
7 Hogan and Hartson, and I think perhaps due to some  
8 confusion, I was also asked to come here on behalf of  
9 CII. So, we have two representatives on behalf of CII.

10 MR. TOPOROFF: Okay.

11 MR. TIFFORD: I'm John Tifford. I'm with the  
12 firm of Rudnick, Wolfe, Epstien and Zeidman. I'm here on  
13 behalf of Entrepreneur Media as well as Merchandise Mart.

14 MR. LUDLUM: My name is Mike Ludlum. I'm with  
15 Entrepreneur Magazine.

16 MR. TOPOROFF: Okay. I want to begin by giving  
17 a brief overview of the trade show issue, at least from  
18 our perspective at the Commission, and then we can get  
19 into the substantive areas.

20 I want to begin by noting the current standard  
21 of liability for trade show promoters. I'm sure most of  
22 you are aware that currently trade show promoters can be  
23 held liable as brokers for violations by exhibitors at  
24 the trade shows. There is a conditional exemption from

1 liability if the promoter gives out a consumer protection  
2 education notice.

3 Exhibitors at a trade show, of course, could be  
4 liable for violations of the Franchise Rule if they  
5 engage in substantive discussions that would be deemed  
6 the first personal meeting. Also, in the same regard, if  
7 they make earnings claims, that also could have the  
8 effect of changing the light casual discussion into a  
9 personal meeting, in which case, disclosures would also  
10 have to be made. And of course, exhibitors could be  
11 liable under Section V of the Federal Trade Commission  
12 Act for misrepresentations or false or unsubstantiated  
13 statements as well.

14 I briefly want to go through the Federal Trade  
15 Commission's concerns in this area, which basically  
16 highlights why this issue even came up when the  
17 Commission reviewed the rule in 1995.

18 First, it is no secret that in the early '90s,  
19 the Federal Trade Commission staff, along with several  
20 Offices of Attorneys General across the United States,  
21 visited trade shows, and indeed, the Federal Trade  
22 Commission has consents, with at least two that I'm aware  
23 of, of trade shows promoters settling charges that the

1 promoters should be liable as brokers because of law  
2 violations engaged in by the exhibitors.

3 The main concern, I think, that staff has is  
4 the making of earnings claims without substantiation or  
5 without making disclosures at trade shows. For example,  
6 a particular case that's in litigation now, I think, is  
7 indicative. And I won't name the case because at this  
8 point nothing has been proven. It's all allegations.  
9 But suffice it to say, all the consumer declarations  
10 that we've had in the case, every consumer without  
11 exception purchased -- in this case it was a business  
12 opportunity -- at a trade show.

13 In addition, the evidence that we have gathered  
14 and presented to the court to date showed that this  
15 particular trade show exhibitor actually -- it's not a  
16 trade show promoter -- this exhibitor was fined three  
17 times in the State of Florida for various disclosure  
18 violations in less than one year. At the same time, the  
19 exhibitor was subject to an injunctive action in the  
20 State of Kentucky.

21 Our experience in visiting trade shows seems to  
22 confirm that in many instances exhibitors have made  
23 earnings claims or given out documents that may have  
24 earnings claims in them. For example, in one trade show

1 promoter, there's the infamous plexi-glass case with the  
2 \$100,000 in it with the sign that says, this can be yours  
3 in one year.

4 So, I think that our law enforcement experience  
5 and going to trade shows gives us some pause about the  
6 type of conduct and the type of claims that are made at  
7 the shows, which also gives rise to the second issue:  
8 who should be responsible for that and whether the trade  
9 show promoters have any liability in this as well.

10 As far as the legal issues go, and this will  
11 frame much of the discussion, I believe, today, is a few  
12 concerns. One is the issue of face-to-face or personal  
13 meeting. When at a trade show do promoters -- again, I  
14 shouldn't use the word promoters. When do the exhibitors  
15 or the sellers cross the line from a casual discussion  
16 into a face-to-face meeting which would trigger the  
17 disclosure obligations. Same lines, when do exhibitors,  
18 if at all, make any kinds of representations, be it  
19 earnings representations or others, that may violate  
20 Section V of the FTC Rule.

21 Another concern is whether sales are made at  
22 the trade shows either through closing booths or meetings  
23 in hotel rooms very shortly thereafter that basically

1 the ten business days provision that would allow the  
2 prospective buyer time to review the disclosure document.

3 We're also concerned about the ability of  
4 consumers to comparison shop. If substantive discussions  
5 are going on at a trade show and disclosures are not  
6 made, it may impede or make it otherwise difficult for  
7 consumers to be able to comparison shop and that's the  
8 whole point or one of the points of having a disclosure  
9 document in the first place.

10 Another concern that was raised in the  
11 comments, which I think is a valid one, is the whole area  
12 of honest competition. One of the comments, I don't  
13 remember the comment number, but I think it was submitted  
14 by the National Claims Service, raised the point that  
15 they go to trade shows and they try either not to make  
16 earnings claims or not to get into substantive  
17 discussions and they feel that they're losing business  
18 because of that because when they go to the trade shows  
19 they see others who do make claims or do close sales  
20 pretty quickly and they feel that they're at a  
21 competitive disadvantage. So, I think that that's a  
22 concern also.

23 Finally, an issue that I'm sure we're going to  
24 discuss -- at least I want to hear about -- is whether

1           there's a distinction between temporary trade shows,  
2           which are the typical ones that we see, the ones that go  
3           to the convention centers across the country on various  
4           weekends and permanent shows, such as the one in Chicago  
5           as I understand it.

6                         John, is it still in Chicago?

7                         MR. TIFFORD: Yes, it is.

8                         MR. TOPOROFF: Okay. And whether there's a  
9           distinction between those two.

10                        With that, let's begin.

11                        The first item on the agenda is the trade show  
12           industry generally. To complete the record here and so  
13           that we have a full opportunity to understand exactly  
14           how trade shows are organized and run -- because I think  
15           that that would help us, again, understand the issues  
16           better -- we want to discuss, again, a little in detail  
17           about who are the trade show promoters, how are they  
18           organized, how are trade shows run and any other related  
19           issues that might help us to understand this.

20                        So, with that, I'm going to open up the floor.  
21           I would ask for the benefit of the stenographer and the  
22           record for everybody to introduce themselves and at least  
23           state their name. Also, if anybody has any comments  
24           about what another participant may say, you are free to

1 raise your hand and ask questions or offer comments.  
2 This should be interactive somewhat. This is not a  
3 hearing. I don't intend to ask all the questions or the  
4 FTC members. So, feel free to question each other as  
5 well.

6 MR. LUDLUM: I'm Mike Ludlum. I'm with  
7 Entrepreneur Magazine. Entrepreneur Magazine is one  
8 trade show promoter. We do between eight and nine shows  
9 per year.

10 MR. TOPOROFF: Okay. And where are those shows  
11 located?

12 MR. LUDLUM: Usually the major markets, L.A.,  
13 New York, Chicago, Dallas, Atlanta, San Francisco.

14 MR. TOPOROFF: So, as a preliminary question,  
15 who are the major trade show promoters in the United  
16 States? How many are there?

17 MR. LUDLUM: Well, probably the largest one is  
18 Blenheim.

19 MR. TOPOROFF: Blenheim?

20 MR. LUDLUM: Blenheim is probably the largest.

21 MR. TOPOROFF: Okay.

22 MR. LUDLUM: When we're talking about trade  
23 shows, we're talking about the franchise/business  
24 opportunity type shows?

1 MR. TOPOROFF: Right, right.

2 MR. LUDLUM: Probably the next largest is SC  
3 Promotions. There's a company named QM Marketing that is  
4 still out there I believe. They don't do that many shows  
5 anymore. And Entrepreneur Magazine.

6 MR. TOPOROFF: Shulman is out of the business,  
7 right? Is that correct? Are they still -- it's my  
8 understanding is that there was some announcement earlier  
9 in the year. Does anybody know that? You don't know?

10 MR. LUDLUM: No, I don't.

11 MR. TOPOROFF: Who's CII? Is that a new  
12 player?

13 MR. WULFF: CII is a recent entrant into the  
14 U.S. market. It's a company that's based in the U.K. and  
15 is the major franchise trade show operator in the U.K.



1 MR. TOPOROFF: Okay. So, you have Blenheim, SC  
2 Promotions, QM Marketing, Entrepreneur Media and CII. Is  
3 it fair to say that those are the main players?

4 MR. TIFFORD: I think also in terms of the  
5 permanent shows, if there is such a new breed that's  
6 beginning, we have Merchandise Mart which has established  
7 a permanent location in Chicago where there are permanent  
8 displays by many franchisors, meeting rooms and places  
9 for either individuals on their own to go through or to  
10 meet with franchisors.

11 MR. TOPOROFF: So, is anybody aware of any  
12 other trade shows exhibitors at this point? Just so that  
13 we're clear of who we're talking about.

14 (No response.)

15 MR. TOPOROFF: Okay. So, more or less, we have  
16 it.

17 Could you explain how the trade shows, the  
18 actual shows are organized? Let's talk a hypothetical.  
19 I don't want to pick on any particular operator here.  
20 So, let's talk hypothetically.

21 If a -- if I wanted to form a trade show and  
22 become a trade show promoter, how would I go about doing  
23 that? How would I go about lining up exhibitors for  
24 example? How would I line up space? How does that work?

1                   MR. LUDLUM: Well, the first thing you would  
2 have to do is secure a hotel or a convention center and  
3 get dates and from that you start selling exhibit space  
4 in that location.

5                   MR. TOPOROFF: Okay. Now, how do the trade  
6 show promoters get the exhibitors? Is there a trade  
7 press where the promoter would advertise? Is it by word  
8 of mouth? How does that work?

9                   MR. LUDLUM: Well, Entrepreneur Magazine has a  
10 lot of advertisers and we have four different magazines.  
11 So, we go to our advertisers first. There's a lot of  
12 word of mouth and we certainly take advantage of the  
13 competition like at competing shows.

14                   MR. TOPOROFF: Okay. Let's use CII as the  
15 example. They're in the U.K., they're coming to the  
16 United States. How do they go about lining up the 100,  
17 200, whatever number of exhibitors that are going to be  
18 featured? How does that work?

19                   MR. FORSETH: Well, very similarly, they have  
20 picked a date for a show in California and theirs is  
21 going to be a franchise show alone, not business  
22 opportunities, and they have certain strategic alliances  
23 with various companies who are suppliers as well as  
24 franchisors and are promoting it.

1 MR. WULFF: And a lot of the promotion, I  
2 think, is done by word of mouth. It's meeting -- going  
3 to the IFA convention, meeting with franchisors, talking  
4 about their history and what they've done in the U.K., et  
5 cetera. I'm not aware that they've done any general  
6 advertising as such.

7 MR. FORSETH: No, not that I've seen.

8 MR. TOPOROFF: Okay. So, there's no -- again,  
9 just so that the record is clear, there's no inside trade  
10 press or newsletters or anything like that that the trade  
11 show promoters would use to solicit exhibitors.

12 MR. WULFF: I'm not sure. I mean, I'm sure  
13 they all have brochures which describe the exhibition  
14 that they're going to be --

15 MR. TOPOROFF: Right, right. But in terms of  
16 gaining the exhibitors.

17 MR. WULFF: I think those brochures are  
18 probably used also for the exhibitors.

19 MR. TOPOROFF: Any questions?

20 What do the contracts look like? When a trade  
21 show promoter signs up a particular exhibitor to be  
22 featured at their show, I assume that there's some kind  
23 of contract that they sign. Is there?

24 MR. LUDLUM: There sure is.

1                   MR. TOPOROFF:  And what do the contracts look  
2                   like?  What are the general terms and conditions?

3                   MR. LUDLUM:  The boilerplate on the back if  
4                   that's what you're after is --

5                   MR. TOPOROFF:  Right.

6                   MR. LUDLUM:  -- really the portion where we  
7                   require and make sure that they're aware of their  
8                   responsibilities as far as having a UFOC or that they're  
9                   licensed to do business in that particular state that

1                   MR. TIFFORD: Contracts I have seen also -- as  
2                   Eric said, there's certain basic provisions such as how  
3                   much you're going to pay.

4                   MR. TOPOROFF: Right.

5                   MR. TIFFORD: And where your booth space is.

1 Entrepreneur show if you haven't first furnished to  
2 Entrepreneur prior to the show a copy of a disclosure  
3 document or a copy of a letter from the attorney for the  
4 business opportunity saying that we've reviewed the  
5 relationship and it's not covered by the relevant Federal  
6 or state laws.

7 MR. TOPOROFF: But you wouldn't know  
8 necessarily whether that type of provision is universal  
9 among the trade show promoters.

10 MR. TIFFORD: No, I have not seen everybody's  
11 contracts.

12 MR. TOPOROFF: Okay. Dale, did you have a  
13 question or comment?

14 MR. CANTONE: I probably have both.

15 MR. TOPOROFF: Okay.

16 MR. CANTONE: My question is, how much in  
17 advance does a promoter know who's going to be at the  
18 show, in other words, who the exhibitors are? Is it a  
19 matter of an exhibitor can sign up to be in a show a  
20 couple of days before, 15 days before, 2 days before? Do  
21 you have any sense of that?

22 MR. LUDLUM: All of the above and more.

23 MR. CANTONE: Okay.

1                   MR. LUDLUM: We publish our schedule for the  
2                   entire year and many people will say, we'll take the  
                  whole schedule, we'll be in all eight or nine shows. So,

1 MR. FORSETH: No.

2 MR. WULFF: I'm not aware of whether they do  
3 that or not.

4 MR. TOPOROFF: Okay. Would you say --

5 MR. WULFF: I think it's -- for an exhibitor,  
6 quite frankly, I think it's a little bit of a slippery  
7 slope to get on in terms of taking upon yourself some  
8 level of enforcement in terms of the law. For example,  
9 would you expect the exhibitor to have people on the  
10 floor going around checking with the promoters as to  
11 whether they're making earnings claims or not and  
12 shutting down their booths if they are. It's a -- I  
13 mean, I don't know that that's the responsibility of the  
14 trade show operator quite frankly.

15 MR. TOPOROFF: Mark?

16 MR. FORSETH: That's more confusing because at  
17 first you were saying exhibitor and promoter. If you  
18 flip the words, I think that's a correct assumption. I  
19 mean, that would be a very, you know, large amount of  
20 resources to require a trade show promoter to go out  
21 there and monitor the floor and see who's making earnings  
22 claims and who's not, and if they are, whether they have  
23 one in their offering circular. I mean, you're asking  
24 them to kind of take on a role to insure legal compliance



1 that I'm just not sure they have the wherewithal to do or  
2 the knowledge or experience to be able to do it.

3 MR. TOPOROFF: Dale?

4 MR. CANTONE: Actually, I've got another  
5 question and then a comment about Entrepreneur. The  
6 question is, when Entrepreneur checks to see if somebody  
7 has a UFOC, does Entrepreneur do any checking about  
8 applicable state laws as well? For example, some states  
9 require registration of the exhibitors.

10 MR. TIFFORD: Do you know? Are you in this  
11 area of the business to know what happens to the  
12 disclosure document when it gets into Entrepreneur?

13 MR. LUDLUM: Well, it just comes in and we just  
14 keep it. I mean, honestly we don't know if it's a  
15 legitimate UFOC or not.

16 MR. CANTONE: But I mean as far as -- for  
17 example, the issue of registration. Does Entrepreneur do  
18 any checking about state registration when that's  
19 required, do you know?

20 MR. LUDLUM: No, I don't.

21 MR. CANTONE: Okay.

22 MR. TIFFORD: You don't know whether they do?

23 MR. LUDLUM: I don't know whether they do.

24 MR. CANTONE: Okay. And --

1 MR. TIFFORD: In terms of -- if I could go --  
2 I'm sorry, Dale.

3 MR. CANTONE: That's all right. And my comment  
4 is I applaud Entrepreneur for checking the disclosure  
5 documents because it's been my experience that -- I can't  
6 say for sure, but I wonder if the other promoters in the  
7 business do that. Because certainly from our enforcement  
8 experience there's been significant numbers of exhibitors  
9 at trade shows that do not have disclosure documents for  
10 the ones that take place in Maryland. So, I think as a  
11 fact that the promoters who have come to Maryland, not  
12 Entrepreneur, can't be checking as Entrepreneur  
13 apparently does, that there are disclosure documents.

14 MR. TIFFORD: Dale, would it be -- speaking  
15 certainly for Maryland and I think probably on the  
16 experience of your other examiners, would it be helpful  
17 if trade show promoters were, say within a week of  
18 attending a show in a state, to at least provide a list  
19 of attendees as of that day to the state regulators?

20 MR. CANTONE: Absolutely. We have asked for  
21 that of specific promoters, and I have to say up to this  
22 point, we have only gotten limited success. Some of the  
23 big ones have done that, but many of the other ones will  
24 show up in town without --

1 MR. TOPOROFF: Well, let me just say on the  
2 agenda at the last major item, we're going to address  
3 voluntary steps that the trade shows might be able to  
4 take here to work with the Federal Trade Commission and  
5 NAASA and I think maybe that would be best addressed  
6 then.

7 I mean, right now what I want to do is just  
8 make sure that I understand and the record reflects what  
9 really goes on at trade shows from the perspective of the  
10 trade show promoters.

11 A question that I had is, we said that in your  
12 contract, Entrepreneur's contract, it is required that a  
13 company have the UFOC and file that. Is there any other  
14 provisions in the contract that would give Entrepreneur  
15 Media the right, let's say, to deny entry or to kick out  
16 a promoter on the trade show floor? Is there any conduct  
17 that an exhibitor could engage in that would violate any  
18 provision in your contract?

19 MR. LUDLUM: Yes.

20 MR. TOPOROFF: Okay. Could you describe those?

21 MR. LUDLUM: I probably couldn't list them all,  
22 but a violation of any of the rules and regulations that  
23 we have that could -- it can go anywhere from improper  
24 behavior to really any infraction of any of the

1 regulations which -- the silly ones are like you have to  
2 stay in your booth, you can't get out in the aisle, your  
3 signage can't block somebody else's.

4 MR. TOPOROFF: So, those are more conditions  
5 that go toward the -- to insure that the show is run well  
6 and that it does what it's supposed to do and that is  
7 offer all the exhibitors an opportunity, a good  
8 opportunity, to display what they have to offer.

9 MR. TIFFORD: I think that's accurate, but I  
10 think to the extent that it might imply that there's no  
11 interest in doing other things, that would not be  
12 accurate. I think what the trade show promoter is doing  
13 is doing what it has within its power to do to make sure  
14 that it's a properly run show where the exhibitors have  
15 the opportunity to meet with consumers and consumers have  
16 the opportunity to meet with exhibitors and do it in a  
17 way where there's no intimidation or harassment or other  
18 kind of abusive conduct.

19 MR. TOPOROFF: Dale?

20 MR. CANTONE: Have we clarified that  
21 Entrepreneur could terminate somebody for violation of  
22 applicable Federal or state law? Is that in the contract  
23 as one of the things that you could --

1 MR. LUDLUM: Yeah, they must be in compliance  
2 with state laws.

3 MR. CANTONE: And Federal laws?

4 MR. LUDLUM: That's right.

5 MR. TOPOROFF: But just to clarify that,  
6 there's no provision in the contract, as I understand it  
7 from the discussion just a minute ago, that specifically  
8 requires an exhibitor to register with the state if the  
9 state has a registration law. Is that correct?

10 MR. TIFFORD: I just can't remember. I just  
11 can't remember. But it certainly would be implicit if  
12 they have to be in compliance with Federal and state law  
13 and they're coming into Maryland and they haven't  
14 registered in Maryland, they're covered by the Maryland  
15 statute, then they are in non-compliance with the  
16 contract.

17 MR. FORSETH: Can I ask a question?

18 MR. TOPOROFF: Mark?

19 MR. FORSETH: I assume it's just a general  
20 provision in their contract that says, you must be in  
21 compliance with Federal and state law, period, end of  
22 sentence. Not much more specifics. Or does it go into  
23 detail and identify franchise laws? I assume that  
24 there's no due diligence on your part to go out and make

1       sure that, you know, someone is registered as a foreign  
2       corporation to do business in a particular state or to  
3       do those kinds of things because you simply don't have  
4       the staff to do that. I mean, is that something -- or am  
5       I --

6                   MR. LUDLUM: I really don't remember, but I  
7       think it's more of a general distinction.

8                   MR. TOPOROFF: Let me ask you a hypothetical.  
9       Dale or somebody in his office is attending a show in  
10      Baltimore and Maryland being a registration state. If  
11      Dale discovers -- as he has a list, a printout beforehand  
12      let's say of all the registrations in Maryland, he comes  
13      across X company and it's not on the list and he verifies  
14      and he knows that that company is not registered to sell  
15      in Maryland. If he were to go to the promoter or the  
16      promoter's representative there that day, is there any --  
17      and Dale explains what he's observed, does that have any  
18      meaning to the promoter at that point? Could the  
19      promoter take any action or would it?

20                   MR. LUDLUM: I'm sorry, and Dale is  
21      representing who?

22                   MR. TOPOROFF: The State of Maryland.

23                   MR. LUDLUM: And he comes to me representing  
24      the State of Maryland?

1 MR. TOPOROFF: Right, at a show in Baltimore.

2 MR. LUDLUM: Yes.

3 MR. TOPOROFF: And he shows you that a  
4 particular company is not registered.

5 MR. LUDLUM: That would carry enough weight,  
6 yes.

7 MR. TOPOROFF: And what could be done, if  
8 anything, under the contract?

9 MR. LUDLUM: Well, we would have the right at  
10 that time to take them off the floor. We could kick them  
11 out of the show.

12 MR. TOPOROFF: Okay. Dale?

13 MR. CANTONE: Let me just briefly mention that  
14 a problem with even the scenario that you pose and I  
15 think maybe you'll go into it in the future. In many  
16 cases, there's disagreements about the application of  
17 both Federal and state law to a particular seller. And  
18 now I'm talking more about the business opportunity type  
19 franchises.

20 MR. TOPOROFF: Right.

21 MR. CANTONE: We have disagreements all the  
22 time from people who are clearly covered under our law  
23 and your law and yet either don't seem to understand it  
24 or don't want to admit it. So, in many cases, the

1 advance notification is really going to be helpful to  
2 clarify in advance that these people need to be covered.  
3 Because as a practical matter, we don't want to go -- you  
4 know, at a trade show at that point and pull somebody out  
5 of it or ask that the promoter pull somebody out of it.  
6 We'd like to avoid that at all costs.

7 MR. TIFFORD: And it is a very slippery slope  
8 because if it's not absolutely clear -- now, I think it  
9 would be -- certainly Dale has a list of people who are  
10 registered in the state. If you go to the exhibitor and  
11 the exhibitor says, I spoke to my lawyer and here's my  
12 lawyer's letter and I don't understand the law, but this  
13 guy does and he's giving me advice, now what do you  
14 expect the promoter to do? If he says, get off the show,  
15 we're talking breach of contract.

16 MR. TOPOROFF: No, I'm saying --

17 MR. TIFFORD: I mean, we're putting the  
18 promoter in a very difficult situation. I'm not saying  
19 you're presenting this as a policy that's soon to be  
20 made, but just as we explore the options, even when Dale  
21 comes with what looks like pretty prima facie evidence  
22 that this person is breaking the law, if there's any  
23 dispute -- unless the exhibitor says, you're absolutely  
24 right, you've caught me, then we've got a real problem



1 and you've put the promoter absolutely in the middle of a  
2 breach of contract.

3 MR. TOPOROFF: I understand that. The  
4 hypothetical that I'm raising is really the best or worst  
5 case scenario depending upon how you want to view it.  
6 The exhibitor is clearly covered by the rule, no argument  
7 let's say and they clearly are not registered in Maryland  
8 and they do not have either a UFOC present or never  
9 submitted one or do not have a letter from the attorney.

10 MR. TIFFORD: But you see -- excuse me. I just  
11 have to say, this is -- even in what seems to be  
12 absolutely the clearest possible case, we have problems.

13 MR. TOPOROFF: Okay.

14 MR. TIFFORD: And now get to the real issues  
15 that come up. There's an earnings claim that's being  
16 made. Well, maybe the promoter has -- and the exhibitor  
17 has, in fact, made an earnings claim in his offering  
18 circular. How do we know that?

19 So, we have to have everything -- we have to  
20 walk through the halls -- for instance, the promoter  
21 would have to walk through the halls and say, gee, I see  
22 a sign that says you can make \$2,000 a month. Let me  
23 somehow call my headquarters or let me -- if I have the  
24 document on the premises, let me flip through their

1 offering circular and see whether or not they say you can  
2 make \$2,000 a month or I've just overheard somebody say,  
3 I can put you in business for \$27,000. Let me run back  
4 and take a look at item seven and see whether in fact  
5 they say \$27,000 in item seven. And even if they say  
6 \$27,000 in item seven, who's looked at the substantiated  
7 material to know whether it was really \$57,000, but that  
8 they -- the exhibitor has not accurately portrayed the  
9 information in the offering circular.

10 And those -- I mean, it gets even more  
11 difficult when you start getting into these substantive  
12 things. Is the offering circular accurately stating the  
13 facts? And of course, if they're not covered by the law,  
14 what document would you ever look at to determine whether  
15 or not someone could make \$2,000 a month or can get into  
16 business for \$27,000?

17 MR. WULFF: I would support what John has just  
18 articulated, that I think it would unfair and impractical  
19 to impose those kind of obligations on the promoter. I  
20 think in the hypothetical that you posed, I think the  
21 promoter could make an independent business judgement as  
22 to whether or not it would close down that particular  
23 booth depending on the circumstances. But I don't think  
24 it should be caught in the middle. It is between the

1 State of Maryland and the particular exhibitor. I mean,  
2 that's where the dispute lies.

3 MR. TOPOROFF: I just want to interrupt a  
4 second. I appreciate the concern and we'll certainly get  
5 to it. What you're raising are questions of policy,  
6 whether the Commission should/shouldn't, whether Maryland  
7 should/shouldn't. What I'm asking about really is what  
8 legally could the promoter do under its typical contract  
9 so that I have an understanding of what the exhibitor's  
10 obligations are and what the promoter's potential -- not  
11 responsibilities, but potential rights that they could  
12 exercise under the contract.

13 So, right now I just want to focus on the  
14 contract. There certainly will be time this morning to  
15 get to the policy concerns and related issues.

16 So, just getting back to what's squarely in the  
17 contract. Again, under the hypothetical that Dale is at  
18 the show and let's just say for argument's sake that it's  
19 relatively clear that this promoter has not registered  
20 and doesn't have disclosure documents. Under the  
21 contract, is there anything that would give Entrepreneur  
22 Media the right to basically kick out the exhibitor at  
23 that point?

1                   MR. LUDLUM: It sounds to me like if he's not  
2 in compliance with state regulations and he signed a  
3 contract saying that he was, that he would be in  
4 violation of that contract.

5                   MR. TOPOROFF: Okay. Dale, do you have any  
6 questions about that?

7                   MR. CANTONE: No.

8                   MR. WULFF: I have a question for Dale. What  
9 if the trade show is in Virginia and it's right across  
10 the river and you expect a lot of Maryland residents to  
11 go there as well, what's your position -- would you go to  
12 that trade show and canvas it and determine whether  
13 they're in compliance with Maryland law even though the  
14 trade show is in Virginia?

15                   I mean, part of the issue here is that people  
16 are drawn from all over the world to these trade shows  
17 and you've got disclosure laws in various states, in  
18 various countries and the difficulty then is knowing  
19 under what circumstances that particular exhibitor should  
20 be registered, should have a particular disclosure  
21 document, et cetera. And if you then transpose that to  
22 the situation of the promoter and whether and to what  
23 extent it has responsibilities with respect to that, I  
24 mean it gives you a sense of the magnitude of what

1           you're -- what we're dealing with here.

2                       MR. CANTONE: To answer your question, Maryland  
3 has no enforcement position with regard to a show in  
4 Virginia that isn't selling to a Maryland resident. So,  
5 I'm not going to tell you that we've never done it  
6 because it's something that I wouldn't say one way or the  
7 other. But we don't have unlimited staff to go to  
8 Virginia to police a show without a specific reason to do  
9 so.

10                      MR. TIFFORD: And let's make it even more  
11 complicated since you've used the example of Maryland and  
12 Virginia. Under the Virginia franchise registration law,  
13 the only people who are obligated to register are those  
14 with the principal place of business of the franchisee is  
15 contemplated to be in Virginia.

16                      MR. WULFF: Right.

17                      MR. TIFFORD: So, you could hold a show in  
18 Maryland -- in Virginia and make all kinds of offers and  
19 everything and if you're not going to -- and you don't  
20 know until you've sold the franchise whether or not it  
21 could be covered by the Virginia law. So, there would be  
22 nothing illegal about somebody -- some exhibitor coming  
into Virginia, not being registered in Virginia and

1 MR. WULFF: Right.

2 MR. TIFFORD: Attempting to make offers. It's  
3 not the triggering event --

4 MR. FORSETH: You need it making sales.

1 Crystal City, conduct a show and attend a show there and  
2 talk to all Virginia residents.

3 MR. TOPOROFF: It might be a potential problem  
4 under the FTC rule.

5 MR. TIFFORD: Well, yeah. But if they have an  
6 offering circular, but they're not registered in  
7 Virginia.

8 MR. TOPOROFF: Right.

9 MR. TIFFORD: All I'm saying is even though you  
10 have a provision that says you have to be in compliance  
11 with Federal and state law, even when you go into a  
12 registration state, it's not always clear that you're  
13 covered or that you need to be covered.

14 MR. TOPOROFF: Do you know how that works in  
15 the other registration states? Is it similar to Virginia  
16 or --

17 MR. TIFFORD: Well, some of them are based on  
18 offers, but some of them have out-of-state sales  
19 exemptions. So, if you are dealing with people who  
20 never -- are not residents of the state and don't intend  
21 to locate in the state, there are a number of states  
22 where you may very well not have to comply. It depends a  
23 lot of times on the individuals.

1                   MR. TOPOROFF: Okay. Does anybody have  
2 specific information about what the practice is in any  
3 other registration state?

4                   MR. FORSETH: In terms of jurisdictional scope?

5                   MR. TOPOROFF: What John is pointing to. For  
6 example, does anybody know what the practice is in New  
7 York?

8                   MR. TIFFORD: In terms of what?

9                   MR. FORSETH: It's offer and acceptance in the  
10 state. So, to the extent that you are offering from or  
11 accepting an offer in the State of New York, then you're  
12 in a show and so if the show was taking place in New  
13 York, there's an assumption that offer and acceptance is  
14 probably taking place in New York. So, you probably have



1                   MR. TOPOROFF: But that's precisely what I'm  
2 getting at.

3                   MR. WULFF: But what you're getting at is that  
4 the offer and acceptance language is very broad and can  
5 and cannot apply to particular circumstances. It just  
6 all depends. And then there are out-of-state sales  
7 exemptions. So, you really need a lawyer on staff, a  
8 franchise expert, to discern exactly under what  
9 circumstances that particular exhibitor ought to be  
10 registered in a particular state when someone comes by  
11 his booth if you're going to look at that as a triggering  
12 event.

13                   MR. CANTONE: Or you could contact the state  
14 and we will advise anyone about the application of our  
15 state's law.

16                   MR. FORSETH: But then you get into the issue  
17 of -- and I think that's very important and that is a  
18 good point that you raised, Dale, is that if someone is  
19 providing the promoter a letter that says, I'm not a  
20 franchise, I'm X, and we all know that there's  
21 differences of opinion and debates. And I've certainly  
22 sat in your shoes and had to deal with those arguments as  
23 to whether or not something is, in fact, a franchise and  
24 it can become a very cumbersome legal analysis and

1 putting a trade show promoter into making that  
2 determination is very difficult at best.

3 MR. TIFFORD: And going a step further, in  
4 Mark's example, if you were to have a Pennsylvania  
5 exhibitor meeting somebody in New York who is a West  
6 Virginia resident and they're talking about the  
7 establishment of a franchise in West Virginia, I don't  
8 think New York has ever made any effort to enforce the  
9 statute in that respect and I think they might have some  
10 problems even if they tried. I think the point that  
11 we're all making, whatever the answer to that scenario  
12 is, is that it's never clear.

13 Even in the hypothetical that you started with  
14 where it seemed prima facie clear, it wasn't necessarily  
15 clear. And then when you take a look at the individual  
16 state statutes, you find out how even more confusing it  
17 is. And to ask a promoter on a floor of a show to start  
18 making these kinds of judgements as to what should I do  
19 here when I have a contract with this exhibitor for  
20 space, you know, it's difficult.

21 The specific answer is they have the right, but  
22 it's a very difficult right to exercise in terms of  
23 determining whether or not they've complied with the law.

1                   MR. FORSETH: The state has the authority  
2                   though -- and when I was with Maryland, I exercised this  
3                   on several occasions. The state has the authority to  
4                   walk in with a C&D and slap the promoter or slap the  
5                   actual exhibitor and say good-bye, you know, we're  
6                   shutting you down, and we've done that before.

7                   MR. TOPOROFF: Dale?

8                   MR. CANTONE: Well, one thing, I'm certainly  
9                   not making the point that state law is not clear and I'm  
10                  only here talking about Maryland law. And I will say  
11                  that even though we've had discussions of confusion from  
12                  certain sellers of business opportunities at the  
13                  application of their state law, we can clear up that  
14                  confusion with usually two questions and we almost never  
15                  have it with a lawyer.

16                  So, I haven't had too much problem with a  
17                  conversation with somebody who's willing to listen to me  
18                  about the application of Maryland law to a specific  
19                  business opportunity seller who intends to come in  
20                  Maryland. That we can clear up with usually two  
21                  questions.

22                  MR. TOPOROFF: And the two questions are?

23                  MR. CANTONE: Well, usually the issue that I'm  
24                  talking about goes to whether or not they provide

1 location assistance and we have had discussions with  
2 sellers of business opportunities who swear they provide  
3 absolutely no location assistance. We don't fit under  
4 your rule, we've talked to our lawyer. But this is now  
5 the seller talking and we don't provide location  
6 assistance.

7 The first question then is do you provide a  
8 list of locators. Well, yes. Cleared it up. So, those  
9 are the two questions.

10 So, I'm not saying that it's unclear under  
11 Maryland law. Absolutely not. I think it is clear under  
12 Maryland law what is required to be registered and we  
13 talk to people every day, and people who are willing to  
14 listen, we can work with.

15 MR. WULFF: I think the point is that it is  
16 clear to you what Maryland law is, but Maryland law may  
17 be different from New York, it may be different from  
18 Illinois, it may be different from California. So, the  
19 exhibitor and possibly the promoter than has to deal with  
20 all these various nuances. That's where the complexity  
21 comes in.

22 MR. CANTONE: Well, I suppose that's part and  
23 parcel of doing business in different states and that's  
24 the current state of the law and it's -- for practical

1 purposes, except for some of those nuances, the law isn't  
2 all that different in the different states and certainly  
3 under the FTC rule. In most cases, if they fit under  
4 that definition, they have to have that disclosure  
5 statement. I know in Maryland, if they've got something  
6 that complies with the Federal Trade Commission, then  
7 they don't have to worry about the differences in  
8 Maryland law.

9 MR. TIFFORD: Mark had an interesting point  
10 when he said when he was in Maryland, they had C&Ds and  
11 they could walk into booths and do it. And to me, isn't  
12 that precisely what we're talking about? We have the

1 MR. CANTONE: We certainly have the power at  
2 any time. We have the authority to issue a cease and  
3 desist order. I can go up to an exhibitor who's clearly  
4 violating the law, who's making earnings claims, who's  
5 ripping off consumers left and right and hand them a  
6 cease and desist order and unless I've -- you know,  
7 unless I've got muscles, if they say no and the promoter  
8 backs them up -- you know, as a practical matter until I  
9 go to court, get an injunction, the show is going to be  
10 over.

11 So, for practical matters, if you've got  
12 someone who's not going to comply with that cease and  
13 desist order and I mean is backed up by the promoter,  
14 you're going to have a lot of people hurt before  
15 effective action is --

16 MR. TIFFORD: Have you had that problem?

17 MR. WULFF: Have you had a promoter --

18 MR. TIFFORD: Have you ever handed a cease and  
19 desist order to somebody at a show who told you to shove  
20 it?

21 MR. CANTONE: We've -- up to this point, in  
22 Maryland, I don't think we ever had that situation.

23 MR. TIFFORD: Let me ask just one last  
24 question. Mike, you run the shows. Dale or one of his

1       peers in one of the other states comes to you and says  
2       this exhibitor is in violation of our law, I have a cease

1                   Again, I'm going to go back to the contracts.  
2           If a particular promoter learns that an exhibitor has  
3           been fined let's say in various states or is the subject  
4           of litigation either by franchisees or bus op buyers or  
          the state or the Federal Trade E



1 MR. LUDLUM: Yes.

2 MR. TIFFORD: Or attendees?

3 MR. LUDLUM: Yes.

4 MR. TOPOROFF: Okay. So, what do you do with  
5 the consumer complaints? How are they handled? What's  
6 the process?

7 MR. TIFFORD: Is that before or during a show?

8 MR. TOPOROFF: Let's say after a show. A show  
9 is completed, a sale is made or not made, I mean,  
10 whatever the experience of the consumer might be. But  
11 let's stick with the simpler example. A sale is made and  
12 there is some problem of one type or another and the  
13 buyer complains to Entrepreneur or any of the other trade  
14 shows. Well, we'll stick with yours. Is there a process  
15 for handling the consumer complaints?

16 MR. LUDLUM: Not a formal process. There's  
17 very little that we can do. Typically, it happens long  
18 after the show. But it's something that we just kind of  
19 keep in our files and if this guy wants to come back to  
20 that same market the next year and we've had enough  
21 complaints -- and again, there's nothing formal that says  
22 that three complaints will do it where two complaints  
23 wouldn't.

24 MR. TOPOROFF: Right.

1                   MS. HOWARD: What would happen if the complaint  
2 came during the show?

3                   MR. LUDLUM: That's tough.

4                   MS. HOWARD: Or multiple complaints?

5                   MR. LUDLUM: That's tough. Because it does  
6 happen. We have people say we don't think this guy is  
7 being fair or honest and it's difficult because I'm not  
8 in a position to make the determination as to who is  
9 right or wrong.

10                   MR. TIFFORD: In terms of substantive things

1                   MR. TOPOROFF: Do you ever refer complaints to  
2 the State AG's Office or the Federal Trade Commission or  
3 other law enforcement officials?

4                   MR. LUDLUM: Yes, but I couldn't give you any  
5 specifics. I know that has happened.

6                   MR. TOPOROFF: Okay. Do you know what CII,  
7 what their practices are?

8                   MR. FORSETH: This is their first entrance into  
9 the U.S. market, so I couldn't speak to anything that

1                   MR. TOPOROFF: So, again, I just wanted to make  
2                   it clear for myself. If a promoter did, through whatever  
3                   means, find out that a particular exhibitor, potential  
4                   exhibitor, was fined or the subject of litigation or  
5                   complaints or whatever, there is no formal screening  
6                   process?

7                   MR. LUDLUM: That's correct.

8                   MR. TOPOROFF: And again, for CII you're not  
9                   sure and you don't know how that works.

10                  MR. WULFF: (Nodded head no.)

11                  MR. TIFFORD: But, of course, we ought to keep  
12                  in mind that -- the fact that they are subject to  
13                  complaints, the fact that they have actually been fined  
14                  doesn't stop them from offering or selling franchises or  
15                  business opportunities unless they've been enjoined from  
16                  doing so.

17                  Their franchise offering circulars contemplate  
18                  this disclosure, so they could have a list of eight pages  
19                  of complaints and it wouldn't -- there's no Federal law  
20                  or state law -- possibly the state you could possibly do  
21                  something, you could submit kind of an application, but  
22                  certainly under the FTC rule, they could have eight  
23                  pages, they could have 80 pages of litigation.

24                  MR. TOPOROFF: No, I understand that.

1 MR. TIFFORD: And they would still be able to  
2 sell franchises.

3 MR. TOPOROFF: No, I understand that. This was  
4 more a policy question than a legal question.

5 MR. TIFFORD: All right.

6 MR. TOPOROFF: Certainly they have the right to  
7 sell. It was more a question of as a matter of policy  
8 how the trade shows were organized and what kind of  
9 screening or measures they might take to get a better  
10 sense of who is actually exhibiting on the floor.

11 MR. WULFF: And bear in the mind that the  
12 exhibitors are the promoter's customers.

13 MR. TOPOROFF: Right.

14 MR. WULFF: Bear in mind that relationship.

15 MR. TOPOROFF: We're approaching ten o'clock.  
16 I just want to give anybody else the opportunity to  
17 mention for the record anything about how trade shows are  
18 organized, how they're run, operated, that would help to  
19 complete the record or clarify the issues.

20 MR. LUDLUM: Again, the eight to nine shows  
21 that we do, we go to larger markets and our shows are  
22 very typically large as far as attendance. We're getting  
23 anywhere from 4,000 to 12,000 people. It's just a two-  
24 day event. It's a Saturday and a Sunday only and the

1 hours are from 11:00 till 5:00. So, we try to push these  
2 people through in just a few hours.

3 The comment was made about personal meetings  
4 for the first time and exhibitors had an opportunity to  
5 really get specific with a lot of things. It's certainly  
6 possible that it could happen. It's probably not the  
7 rule that specific information is transferred from the  
8 exhibitor to attendee at our shows. It's really a matter  
9 of just mass distribution of information really in the  
10 form of gather around and let me tell you what I've got  
11 and then get out of here and let the next batch of 20  
12 people come up so that I can pitch it to them.

13 MR. TIFFORD: How many exhibitors do you  
14 typically have at the shows?

15 MR. LUDLUM: At any one time, in the larger  
16 markets probably between 2,000 and 3,000 people.

17 MR. TIFFORD: That would be attendees.

18 MR. LUDLUM: Oh, I'm sorry.

19 MR. TIFFORD: So, at your typical show you  
20 would say that if you took a head count at two o'clock on  
21 a Saturday afternoon there might be 3,000 people on the  
22 floor.

23 MR. LUDLUM: There could be as many as 3,000.

1 MR. TIFFORD: And how many exhibitors might  
2 there be at these shows?

3 MR. LUDLUM: On average, we have about 100  
4 booths.

5 MR. TIFFORD: So, 100 booths and about 3,000  
6 people. Do you have some pictures you might show to  
7 people to give some idea of what we're talking about?

8 MR. LUDLUM: If anybody hasn't been, I just  
9 brought some photos of what a typical draped booth looks  
10 like that measures ten by ten.

11 MR. TIFFORD: And also crowd scenes?

12 MR. LUDLUM: Yeah. I just wanted. . .

13 MR. TOPOROFF: And again, for the record, we're  
14 looking at a few photographs of booths and crowd scenes  
15 at the trade show.

16 MR. TIFFORD: Are you going to introduce them  
17 into the record? We have others if you want to keep  
18 those.

19 MR. TOPOROFF: Do you want me to?

20 MR. TIFFORD: You might as well, sure.

21 MR. TOPOROFF: Okay. I don't know how we're  
22 going to post these on the Internet, but --

23 MR. FORSETH: Scan them.

24 MS. HOWARD: We'll scan them if we can.

1 MR. TOPOROFF: We can scan them. All right.  
2 There are four photographs. I'll just mark on the  
3 back -- any particular order?

4 (No response.)

5 MR. TOPOROFF: Okay.

6 (Whereupon, Exhibits 1 through 4  
7 were marked for identification  
8 and incorporated into the  
9 record.)

10 MR. TIFFORD: It's four photographs of typical  
11 scenes at a trade show and I think they demonstrate just  
12 how crowded it is and also just how small most of these  
13 booths are.

14 MR. TOPOROFF: Okay. CII's trade show, do you  
15 know roughly how many exhibitors?

16 MR. WULFF: No. I think the show that they're  
17 going to have in Long Beach is the first one here in the  
18 U.S. So, they don't have any experience --

19 MR. TOPOROFF: So, they don't really have a  
20 record in the U.S.

21 MR. WULFF: I don't know what their record in  
22 the U.K. is and I'm not sure that's terribly relevant  
23 because it's a different market.



1 MS. HOWARD: When is that show?

2 MR. FORSETH: Particularly because it's their  
3 first entrance into the U.S. market.

4 MR. WULFF: It's mid-September. I think it's  
5 September 12th and 13th.

6 MR. FORSETH: Yeah. September 12th, 13th and  
7 14th. It's three days. It's Friday, Saturday and  
8 Sunday.

9 MR. WULFF: One thing I would also point out  
10 is -- and perhaps this should be a question posed to  
11 Entrepreneur. I assume that Entrepreneur's compensation  
12 is based purely on leasing the space. There's not some  
13 contingency based on the success of the show, the number  
14 of sales that are closed, et cetera.

15 MR. LUDLUM: That's correct. It's purely on  
16 space.

17 MR. WULFF: So, I think it gets you away from  
18 the sense that it's in a promoter's financial interest to  
19 correct themselves.

20 MR. TOPOROFF: Right. No, I appreciate that.

21 MR. CANTONE: I just wanted to add one thing  
22 about some trade show promoters and some things that they  
23 have done with us and with you, the Federal Trade  
24 Commission, that I think makes a bit of a difference.

1 And that is some promoters will actually agree to give  
2 space to Federal and state authorities, a booth, to be  
3 there to answer questions of the public. And I know  
4 every year at the International Franchise Association  
5 International Exhibition they have, so far, graciously  
6 allowed us a booth, us being the State of Virginia, the  
7 State of Maryland and the Federal Trade Commission, if we  
8 want to be there to distribute literature about the law,  
9 about protections to consumers.

10 I believe at one point Blenheim actually let us  
11 do that as well, which we appreciated. And I will say  
12 not only did that help our office get the word out to  
13 consumers, but I do know that it lent an air of  
14 respectability to the show itself because we had  
15 consumers come up to us, the state regulators, and said  
16 well, I assume that if you're here, everyone here is  
17 okay.

18 Of course, the answer to that question was, not  
19 necessarily, but it certainly did -- was a cooperation  
20 and effort that really made a difference and we  
21 appreciated it and I think the consumers appreciated it  
22 and I believe that the promoters got some benefit out of  
23 it.

1                   So, I thought that was something that worked  
2 well and I would encourage other promoters to do that.

3                   MS. COX: This is Carolyn Cox. I was just  
4 wondering what the cost associated with doing that is for  
5 a trade show promoter? I mean, what does it cost to rent  
6 that space?

7                   MR. WULFF: It's one free booth.

8                   MS. COX: Well, I know. But someone else could  
9 have bought that booth.

10                  MR. TIFFORD: That's right. What would be your  
11 cheapest booth or does it vary by market, Mike?

12                  MR. LUDLUM: It varies a little bit by market.  
13 The cheapest booth we have is about \$1,000.

14                  MR. TIFFORD: How much?

15                  MR. LUDLUM: Just about \$1,000.

16                  MS. COX: \$1,000?

17                  MR. FORSETH: Per show?

18                  MR. LUDLUM: Yes.

19                  MR. TOPOROFF: So, as a general proposition, if  
20 a trade show promoter were to give a booth over to the  
21 state or the Federal Trade Commission, we're roughly  
22 talking about \$1,000.

23                  MR. TIFFORD: That would be for a booth, if  
24 they could not otherwise sell the space. And I think you

1           need to think of booths as space. So, to the extent that  
2           you dedicate any part of the exhibit hall to "non-profit"  
3           generating space, it's going to cost money.

4                       MS. HOWARD: At those shows, are they  
5           frequently at capacity in terms of exhibitor space? So,  
6           in fact, this is a true opportunity cost as opposed to  
7           well there's really an entire wall here that's not being  
8           used.

9                       MR. LUDLUM: There's probably always room for  
10          one or two more.

11                      MR. CANTONE: We have never been in a booth at  
          a show that was filled to capacity.

1 MR. FORSETH: At the CII show, they're  
2 contemplating, I know, programs on investigating before  
3 investing so that they'll have lawyers actually speak  
4 about what the law requires franchisors, sellers and  
5 business opportunities to provide as well as people are  
6 speaking to the kinds of things that a prospective  
7 investor should consider in making an informed investment  
8 decision. They're having speakers there about financing,  
9 you know, just a variety of topics.

10 MR. LUDLUM: We do the same types of seminars  
11 at our shows, too.

12 MR. TOPOROFF: Anything else on the background  
13 on trade shows? Myra, do you have any questions?

14 MS. HOWARD: Yeah, I just had a couple of other  
15 questions. I know that the contracts give you permission  
16 basically to kick someone out if they're in violation and  
17 you've already talked about the difficulties that are  
18 inherent and I understand that. I'm just wondering if  
19 that is unprecedented. Have you ever asked an exhibitor  
20 to leave for whatever reason?

21 MR. LUDLUM: Yes. It's very rare though. It's  
22 disruptive. It's usually got to be a major infraction of  
23 one of the rules or it's something that maybe -- the one  
24 instance that comes to mind is where somebody was going

1 to sell a particular product. To maintain a variety of  
2 exhibitors so that we don't just have a lot of vending  
3 machines out there, we'll limit the number of a  
4 particular item that can be sold or a product or a  
5 service or opportunity.

6           Somebody had made a comment that they were --  
7 or in the contract that they were going to sell Product A  
8 and, in fact, they showed up with Product B and it was  
9 more than we really wanted to have on the floor at one  
10 time. So, we removed them.

11           MS. HOWARD: Okay. Is that about the only  
12 instance that you --

13           MR. LUDLUM: I would say it's very rare.

14           MR. TOPOROFF: Question. For the Merchandise  
15 Mart in Chicago, since that's permanently in Chicago, are  
16 there the same type of registration issues? Are the  
17 exhibitors there all registered with the State of  
18 Illinois or --

19           MR. TIFFORD: I believe they have worked very  
20 closely with the Illinois regulators to make sure that  
21 Illinois was very satisfied with the way they were --  
22 with the way in which they were screening exhibitors. I  
23 wasn't involved in that aspect, so I can't tell you

1 exactly what happened. But I know they worked very  
2 closely with the Illinois authorities.

3 MR. TOPOROFF: Roughly how many exhibitors are  
4 there nowadays?

5 MR. TIFFORD: I just can't even guess. I'm not  
6 sure.

7 MR. TOPOROFF: Okay. Let's make it real easy.  
8 Are we talking 1 to 25, 25 to 50 exhibitors?

9 MR. CANTONE: Exhibitors or promoters?

10 MR. TOPOROFF: Exhibitors.

11 MR. TIFFORD: Exhibitors.

12 MR. TOPOROFF: In Chicago.

13 MR. TIFFORD: In Chicago. Are you talking  
14 about Merchandise Mart?

15 MR. TOPOROFF: Yeah.

16 MR. FORSETH: The last time I talked to Jim  
17 Debolt I think that they were probably -- it was over 100  
18 I think.

19 MR. TIFFORD: I think so. I just don't know.

20 MR. TOPOROFF: Ballpark. So, we're talking in  
21 excess of 100.

22 MR. FORSETH: Or probably 50 to 150 I would  
23 guess.

1 MR. TOPOROFF: Okay. I'm not going to hold you  
2 to it.

3 MR. FORSETH: That's probably a fair guess.

4 MR. TOPOROFF: I just wanted to get a sense are  
5 we talking six exhibitors or are we talking more sizable.

6 MR. FORSETH: No, it's more than that. It's  
7 more substantial than that.

8 MR. TOPOROFF: Okay. Any other comments or  
9 questions on this issue?

10 (No response.)

11 MR. TOPOROFF: Okay. Well, I'm going to call a  
12 break for about five minutes.

13 **(Whereupon, a brief recess was**  
14 **taken.)**

15 MR. TOPOROFF: We're back on the record. And  
16 before we pick up on the specific ANPR issues, I just  
17 want to give anybody else an opportunity to clarify or  
18 make any other additional statements based upon the  
19 discussion that we had before.

20 MR. FORSETH: Just a point that was raised  
21 during the break in that if a franchise trade show  
22 promoter was deemed to be a broker and the franchisor  
23 uses the UFOC format offering circular, they would have  
24 to disclose the identity of the broker in item one and



1 the cover page and item two as well as item three of its  
2 offering circular.

3 MR. TIFFORD: And the receipt.

4 MR. FORSETH: And the receipt. So, I mean, it  
5 would be kind of a monumental task requiring possible  
6 amendments depending on -- you know, filing amendments

1 salespeople. But it's still an amendment to your  
2 offering circular that you would have to file.

3 MR. CANTONE: Okay.

4 MR. FORSETH: And you would have -- again, the  
5 franchisor would have responsibility for the accuracies  
6 of the information contained in its offering circular and  
7 then to the extent that you are holding the trade show  
8 promoter as a broker, he would be jointly and severally  
9 liable for the accuracy of the information put into the  
10 offering circular by the franchisor, and in which case,  
11 he would have to independently verify that information  
12 which would be impossible.

13 MR. TIFFORD: And taking it even a step further  
14 to make it even more complicated. Many times you don't  
15 know what the appropriate offering circular is until you  
16 know who your prospective franchisee is. So, the example  
17 we were talking about before, we're having a Virginia  
18 trade show, so there could be people coming down from  
19 Maryland. It's very, very likely that at a minimum,  
20 there would be a Maryland addendum to the offering  
21 circular that any prospective franchisee would need to  
22 get who's covered by the Maryland law. If you -- if an  
23 Indiana prospective franchisee walked into the show and  
24 that was the -- and you carry on a conversation with this

1 person such that disclosure is required, then you would  
2 probably have an Indiana addendum.

3 So, in order for somebody to really be fully in  
4 compliance and make sure there's absolutely no problem,  
5 they would have to walk in with every single disclosure  
6 document for every state they're registered in, every  
7 addendum for every disclosure document depending on where  
8 they are because until they know who their prospective  
9 franchisee is, they don't really know what all the  
10 disclosures they need to give are.

11 MR. TOPOROFF: Okay. Myra?

12 MS. HOWARD: I just had a couple more general  
13 questions. You talked about the cost of a booth and I'm  
14 curious as to whether or not the location plays a bearing  
15 on the cost of a booth.

16 MR. LUDLUM: Not so much the location. If  
17 somebody wanted a corner position, then there's a premium  
18 for that.

19 MS. HOWARD: Okay.

20 MR. LUDLUM: There really isn't a different  
21 cost if you're right up front or in the back with us.

22 MS. HOWARD: Right.

23 MR. LUDLUM: We reserve some of the front  
24 locations for sponsors and that type of thing.

1 MS. HOWARD: Okay. I wondered in terms of like  
2 established franchisors, people that have been exhibiting  
3 with you for a longer time --

4 MR. LUDLUM: Preferential treatment?

5 MS. HOWARD: Right.

6 MR. LUDLUM: Sure.

7 MS. HOWARD: You do? Okay. And I'm just  
8 curious if you have any idea what percentage of people in  
9 terms of how many people attend a particular show and  
10 then when it comes down to it, how many of those people  
11 actually purchase a franchise based on attending? I  
12 realize that's an extremely difficult question.

13 MR. LUDLUM: I couldn't even guess.

14 MS. HOWARD: Okay. And do you know if  
15 franchisors keep any records to the extent that people  
16 that purchase their franchise whether or not they were  
17 introduced at a show?

18 MR. LUDLUM: Yes.

19 MR. TIFFORD: Yes.

20 MR. WULFF: Sure they do.

21 MR. LUDLUM: I'm sure they do.

22 MR. TIFFORD: They sure do.

23 MS. HOWARD: So, the different franchisors  
24 would have that type of information.

1 MR. WULFF: As to their particular experience.

2 MS. HOWARD: Right.

3 MR. WULFF: Sure. That's the way they  
4 determine whether it's worthwhile to go back to the show.

5 MS. HOWARD: Okay.

6 MR. TOPOROFF: Okay. Any other comments?

7 (No response.)

8 MR. TOPOROFF: Okay. Moving along to the ANPR,  
9 I just want to state at the beginning that the Commission  
10 announced in the ANPR that was published in February that  
11 it was leaning in the direction of excluding trade show  
12 promoters as brokers for rule purposes. So, I don't  
13 think that we need to rehash all that.

14 What I would like to do is give everybody who's  
15 participating here the opportunity to summarize what they  
16 might have submitted in their comments or any other  
17 additional points that they want to bring to our  
18 attention that helps to clarify the issue.

19 So, I'll begin with -- we'll start with John.

20 MR. TIFFORD: Well, I think that what we put in  
21 our responses not only for Entrepreneur but also for  
22 Merchandise Mart was said so cogently and so well that I  
23 wouldn't want to do the injustice of trying to paraphrase  
24 it.

1                   Instead, I think what I would like to do is  
2                   just address one or two of the issues that were raised  
3                   initially here.

4                   MR. TOPOROFF:   Okay.

5                   MR. TIFFORD:   And that seems to be singling out  
6                   trade shows as a special vehicle that should be dealt  
7                   with differently than all other forms by which  
8                   franchisors and business opportunity sellers identify a  
9                   prospect for prospective franchisees.  I just don't see  
10                  why there should be a difference -- why trade show  
11                  promoters should be treated any differently than any  
12                  other form of prospect.  I have not heard or seen  
13                  anything that suggests that there's something inherent in  
14                  the trade show milieu that requires a different form of  
15                  treatment.

16                  We heard that the FTC's experience has been  
17                  that some exhibitors have made unlawful earnings claims.  
18                  I don't doubt that for a minute, but I'm sure if you  
19                  looked through newspaper advertisements, you'd find  
20                  earnings claims also.  To say that some exhibitors have  
21                  defrauded attendees at trade show promotions I'm sure is

1 means of newspaper advertisements or other forms of  
2 contact.

3 So, I think the issue isn't the fact that we  
4 have found cases where violations have occurred on people  
5 who were introduced to the seller at a trade show. I  
6 think the issue should be here, is there anything special  
7 about the trade show environment that causes these  
8 problems and I think that's what we really need to worry  
9 about now. And in the absence of that, I don't see any  
10 reason why trade show promoters should be singled out for  
11 special attention. That's number one.

12 Number two, I'm not sure why the trade show  
13 promoters should be forced to assume responsibilities of  
14 law enforcement which they're ill-suited to do. I think  
15 that law enforcement -- they certainly, we would hope,  
16 would work with law enforcement officials to make sure  
17 that their shows are conducted correctly and consumers  
18 are not being injured about it -- from these shows. And  
19 frankly, I think the trade show promoters themselves  
20 recognize for their own reputation, it's important to do  
21 that.

22 But I think it's really important that if the  
23 Commission is thinking of putting some extra burdens on  
24 trade show promoters that they need to establish the

1 record to establish, number one, the prevalence of the  
2 problem, the prevalence of the practice, the degree of  
3 injury and the unique features of the trade show  
4 promotions that differ from any other forms of  
5 prospecting.

6 MR. TOPOROFF: Eric?

7 MR. WULFF: Since John's written statement was  
8 so eloquent and his oral statements were even more  
9 eloquent, I don't think I would want to do it an  
10 injustice by trying to paraphrase what he just said other  
11 than I support what he says, in particular, the thought  
12 that there's something peculiar about the trade show  
13 environment that would justify the imposition of  
14 obligations.

15 I think, again, the FTC rule is focused on  
16 franchisors providing disclosure documents to  
17 franchisees. It is their primary responsibility and the  
18 fact that they go about promoting their franchise  
19 opportunities through various media, I really don't think  
20 should draw those media into the compliance arena.

21 MR. TOPOROFF: I'm going to skip Dale for a  
22 second. Mark?

23 MR. FORSETH: Again, to reiterate what my  
24 counterparts here have said, just to further add onto



1        what Eric said. I'm not sure -- most of these promoting  
2        companies do things -- also other shows other than  
3        franchise and business opportunity shows, although  
4        Entrepreneur may not. They're show operators. They  
5        might have another division that's operating boat shows  
6        or computer shows or -- and I guess to what extent -- and  
7        I'm not sure why a franchise show should be treated  
8        differently than any other show that is just merely a  
9        vehicle to bring exhibitors together and create any more  
10       legal obligation upon the show promoter when they are  
11       really is a leaser of space.

12                    MR. TOPOROFF: Mr. Ludlum?

13                    MR. LUDLUM: Nothing.

14                    MR. TOPOROFF: Dale?

15                    MR. CANTONE: Well, one reason to -- I think  
16        you need to recognize that we're talking about franchises  
17        and a type of franchise called business opportunity. I  
18        think that we have to all remember that there is a  
19        specific type of franchise called business opportunity  
20        where there have been a lot of problems for consumers.

21                    The Maryland Securities Division does not  
22        necessarily favor holding trade show promoters liable as  
23        franchise brokers. We do favor some type of conditional  
24        exemption, which is the current provision, and the

1 condition being some type of requirement on promoters to  
2 provide information to the public. You've already  
3 mentioned that many promoters are doing that. You're  
4 doing something like that.

5 And John Tifford mentioned that he hopes that  
6 promoters would work with state agencies and to a certain  
7 extent some do. They're not all here and they might not  
8 all do and the ones that come in the future who start  
9 into this business might not do as well.

10 And it's not -- I can't imagine it's a great  
11 burden to provide some notification to consumers about  
12 what the law is and things to watch out for, recognizing  
13 that there is a segment of that industry, not necessarily  
14 the established franchises, but there is a segment of the  
15 industry where there is a pattern of problems. And we're  
16 in favor of just letting the public know what the laws  
17 are and things to avoid.

18 And so, in that regard, we would favor that the  
19 exemption that the FTC would fashion have some type of a

1 more substantial because I don't know that that  
2 notification, as it currently exists, is going to -- is  
3 all that effective in letting people know about what the  
4 law is and it certainly doesn't let them know about some  
5 common sense things to watch out for.

6 So, that's our position on the issue of the  
7 exemption for trade show promoters as a franchise broker.

8 MR. TOPOROFF: Mark?

9 MR. FORSETH: Yeah, just to follow up with what  
10 Dale said. I'm not sure trade show promoters would  
11 object to having to put a statement up on their banner  
12 that there are applicable disclosure laws.

13 But having that be a condition as an exemption  
14 or otherwise if you forgot to do that, you're now subject  
15 to being a franchise broker and having all this liability  
16 across the board and jointly and severally liable for all  
17 non-compliance actions by franchisors exhibiting in the  
18 show, I think is inappropriate. I think it's just -- it  
19 should be excluded. It's just not a definition of a --  
20 it's not a broker. They just aren't involved in the  
21 sale. It's just not -- it's -- their relationship isn't  
22 such that they should be held liable conditionally or  
23 otherwise.

1                   Now, I mean, if there's some other provision to  
2 encourage that type of investor education is one thing,  
3 but to have a liability still imposed if they fail to do  
4 it, I just think, is inappropriate.

5                   MR. CANTONE: How else would you do it?

6                   MR. FORSETH: If you have a -- you know, a --

7                   MR. WULFF: You could amend the rule to say  
8 that specifically with respect to franchise trade shows  
9 that promoters must provide this information. And I  
10 think Mark's point is well taken is that if you don't do  
11 that, then you've got responsibility for your own  
12 failure. But under the current scheme of things, if you  
13 don't provide the notice, you have responsibility for  
14 other people's failures.

15                   MR. TIFFORD: That's exactly what's happened in  
16 one or two of the consent decrees where it was -- against  
17 trade show promoters, where they absolutely have done  
18 nothing wrong themselves, it's just that they had not  
19 provided the correct form of notice. There was a  
20 technicality even on that. And --

21                   MR. TOPOROFF: In one instance.

22                   MR. TIFFORD: In one instance, yes. And well,  
23 this is the kind of thing we're talking about here. If  
24 people -- if somebody is misrepresenting, that's a

1           totally different issue. But when we're talking about a  
2           situation where the trade show promoter just didn't  
3           provide the right form of notice, the FTC came to them  
4           and said, we think that there have been people violating  
5           the rules at your show and because you didn't provide the  
6           notice, you're not entitled to the conditional exemption  
7           and therefore you're jointly and severally liable with  
8           them.

9                           And not getting into further details, that was  
10           the basis upon which the trade show promoter was held  
                  responsible, not for anything that they did wrong. !8 6

1       about business opportunities now, because I want to make  
2       that distinction here because I think it needs to be  
3       made.

4                       With regard to the business opportunities  
5       section of the Baltimore Sun, they do two things. One,  
6       they check with our office when they see an ad that  
7       they're concerned about to see whether or not it's in

1                   MR. TOPOROFF: John, isn't there a fundamental  
2 difference though between a trade show and other forms of  
3 media in that if I'm a prospective buyer and I pick up a  
4 newspaper or a magazine or a radio or whatever it might  
5 be -- I'll put aside infomercial, that might be a little  
6 bit different. In general, it's basic information, it's  
7 somewhat limited, it really invites further inquiry, as  
8 opposed to going to a trade show where the line between  
9 the first personal meeting and the general discussion  
10 could be paper thin.

11                   The reason that people go to the trade show is  
12 to engage in discussion and the Commission -- or at least  
13 get information, have the opportunity to ask questions,  
14 get answers. And what the Commission has said in the  
15 final interpretive guides is it recognizes that the first  
16 personal meeting sometimes could be difficult to  
17 determine and said using common sense and other means --  
18 I think it's in reference to at a show -- the exhibitor  
19 could avoid the first face-to-face meeting.

20                   MR. TIFFORD: Well, I think --

21                   MR. TOPOROFF: But I think in that sense the  
22 triggering mechanism for disclosure is a lot closer to  
23 the mark at a trade show than in other forms of media.

1                   MR. TIFFORD: Well, I think we're talking about  
2 two different things. If we're talking about some kind  
3 of consumer education, which is what I think we're  
4 talking about at the moment, the issue is if you're going  
5 to make somebody provide consumer education because of  
6 their bringing people together, then it would seem to me  
7 logically you make everybody who's bringing people  
8 together the same way provide consumer education.

9                   If we're talking about making -- when do you  
10 give a disclosure document, that's -- when does a seller  
11 provide a disclosure document to a prospective  
12 franchisee, that's not a question of trade show  
13 promoters. They don't make disclosure to anybody. It's  
14 just their exhibitors who make the disclosure.

15                   So, the point is it's a completely different  
16 issue that's really -- in terms of when does the  
17 prospective purchaser first get the offering circular.  
18 And that's different from whether or not we should be  
19 giving consumer notices to people about the existence of  
20 laws. I really do think they are the same issue.

21                   MR. TOPOROFF: Okay. I want to clarify a point  
22 and maybe this is a little bit where it gets confusing.  
23 When we look at the trade show promoter issue, we do so  
24 from both the perspective of the promoter and what the



1 promoter's liability should be, as well as on the part of  
2 the exhibitor and what the exhibitor's liabilities might  
3 be. And I think in some respects that it's tied to the  
4 extent that the exhibitors may have -- may cross the line  
5 again and hold first face-to-face meetings or if there  
6 were misrepresentations or there were other kinds of  
7 responsibilities on the exhibitor at the show.

8 It's not a great leap to then say while the  
9 person or the entity that is sponsoring this event, who  
10 may be fully aware of what's going on the trade show  
11 floor, may have some responsibility as a broker given  
12 that the definition of broker speaks in terms of  
13 arranging for the sale of a franchise. So --

14 MR. TIFFORD: I would say that  
15 responsibility -- there's a flip side of responsibility  
16 and that's power and I think they have to go together.  
17 If you want to hold somebody responsible, it's because  
18 they have the power to do something or to prevent  
19 something else to happen and I think that's really where  
20 we come down to the issue here. They don't have the  
21 power and they don't meaningfully have the power to do  
22 what you're hoping to be able to have them do. And they  
23 don't have the financial incentive to rip the consumers  
24 off.

1                   And so, in the absence of those two things, the  
2                   issue becomes why are you putting these people in a  
3                   position of liability when they don't have the power to  
4                   do anything about it?

5                   MR. TOPOROFF: Moving on, on the assumption  
6                   that the Commission is going to exempt trade show  
7                   promoters -- and we're talking strictly about the  
8                   promoters at this point not exhibitors -- how should that  
9                   be done. Right now, there is nothing in the text of the  
10                  rule per se that talks in terms of promoters. I don't  
11                  think the word promoter -- I don't think you're going to  
12                  find it in the rule. Basically, where the issue comes up  
13                  is in the interpretive guides.

14                  MR. FORSETH: Right.

15                  MR. TOPOROFF: So, is it a question of amending  
16                  the rule or is just a question of changing the  
17                  interpretive guides? Is there a significant problem  
18                  nowadays with the promoter issue that would compel the  
19                  Commission to amend the rule itself or again is it a  
20                  question of policy that the Commission could just decide  
21                  on its own, but we're just not going to pursue trade show  
22                  promoters because we don't think that they act as brokers  
23                  or in the alternative amending the interpretive guides?

1                   MR. TIFFORD: Well, I guess I would suggest  
2                   that the rule language right now talks in terms of a  
3                   broker who offers, sells or arranges for the sale of a  
4                   franchise, and that is the -- the concept of arranges for  
5                   the sale was the concept that the Commission seized upon  
6                   in 1979 to say they covered brokers in the interpretive  
7                   guides. And I suppose that as long as you change the  
8                   interpretive guides to say that you don't mean that, that  
9                   to some extent people would not need to worry about the  
10                  FTC rule.

11                  However, there are, believe it or not,  
12                  approximately 12 states now where through baby FTC laws  
13                  or other capabilities, there is a private right of action  
14                  that exists for franchise rule violations and people can  
15                  argue, I think, until the cows come home whether or not  
16                  arranges for the sale is broad enough to cover the  
17                  franchise broker operation. Certainly, the Commission  
18                  has been on record for the last 17 or 18 years to say it  
19                  was.

20                  So, in my mind, to say just what we need to do  
21                  is change the guidelines, I don't think that's the  
22                  complete solution. It would certainly go a long way, but  
23                  as long -- and I would say if the Commission were doing  
24                  nothing else and said should we have a rule amendment

1            simply for the purpose of dealing with the trade show  
2            promoters, I think that legitimate arguments could be  
3            made that that seems like doing a whole lot of work for a  
4            very, very small element of the problem.

5                            But I think that as long as the Commission is  
6            planning to go forward or if the Commission should choose  
7            to go forward with the rule amendment proceeding for  
8            whatever other reasons they want, it seems to me it makes  
9            a lot more sense to do it right and make it clear, not  
10           only for the FTC but for all private right of actions or  
11           states as to what the appropriate policy should be, which  
12           I certainly believe should exclude trade show promoters.

13                           MR. TOPOROFF: Well, let me ask a question on  
14           that. Are you aware of any suits under little FTC acts  
15           by consumers or anybody else against promoters?

16                           MR. TIFFORD: I'm not involved in any of those.  
17           Have you been sued at all, Mike?

18                           MR. LUDLUM: No.

19                           MR. TIFFORD: I personally don't know of any.

20                           MR. TOPOROFF: Is anybody else aware of any  
21           little FTC act suits against promoters?

22                           MR. WULFF: No.

23                           MR. FORSETH: I'm not aware of any such cases.

1                   MR. TOPOROFF: Okay. Because I haven't heard  
2 of any.

3                   MR. WULFF: No.

4                   MR. TOPOROFF: So, what I'm really probing here  
5 is how real or how much of an issue is this. It seems to  
6 me that the issue here is really one for the Federal  
7 Trade Commission, that the Trade Commission has been  
8 concerned about the issue of trade shows and the  
9 promoters and has sought to bring some suits here. If  
10 the Commission decides as a matter of policy or otherwise  
11 that it's just not going to pursue that avenue anymore,  
12 does that really solve the problem?

13                   MR. TIFFORD: Well, it doesn't solve the

1 have a private right of action, is not bound by the FTC's  
2 intentions.

3 And again, I would say if you don't -- if you  
4 would say this is the only thing in the world that we  
5 have to do in the Franchise Rule, maybe it's not worth  
6 the effort. But as long as you're going to amend the  
7 rule, you might as well do this one and get it right.

8 MR. WULFF: Plus the additional point here is  
9 that if you want to impose on trade show promoters  
10 certain consumer education obligations, I don't know how  
11 you can do that with the interpretive guides without  
12 bringing them within the definition of something.

13 MR. TOPOROFF: Well, let's put aside education  
14 for now and let's look strictly at the issue of  
15 liability.

16 MR. WULFF: Okay. But if you then say that a  
17 promoter is not a broker then that's the end of it.  
18 That's the end of the story. That promoter simply does  
19 what he wants to do and he has no liability under the  
20 rule. He may have liability under Section V.

21 MR. TOPOROFF: Well, let's --

22 MR. WULFF: But you cannot impose them on the  
23 promoter, the educational responsibilities that are under  
24 the exemption.

1 MR. TOPOROFF: No, I -- right, I appreciate  
2 that.

3 MR. WULFF: So, what John is saying, I think,  
4 is also supported from this -- from a policy perspective  
5 of what it is that you may still want to do with  
6 promoters and that is some educational responsibility.  
7 Because if you don't do that through a rule amendment, I  
8 don't think you can do it with the interpretive guides  
9 unless you continue to believe that they act in the  
10 capacity of a broker.

11 MR. TOPOROFF: Right. Well, what I was getting  
12 at is if the Commission decides that it just wants to be  
13 out of the business of dealing with promoters, no  
14 education, no liability, no nothing, the question is how  
15 should that be advanced? Whether there's advantages in  
16 doing it -- in amending the rule itself or whether --  
17 since it's not in the rule or it's just a question of  
18 basically cleaning up our interpretive guides. I'm  
19 putting aside the question of education for now. I'm  
20 addressing strictly the liability.

21 MR. WULFF: There are no lawsuits that I'm  
22 aware of against promoters that -- again since 1979, I'm  
23 not aware of any lawsuits on international sales until

1 the recent ones. So, it's been many years before that  
2 actually hit.

3 MR. TOPOROFF: But this --

4 MR. WULFF: So, even though we don't currently  
5 have it, there's the possibility that this kind of  
6 litigation could occur in the future and that ambiguity  
7 on the issue could be the basis of holding a promoter  
8 liable.

9 MR. TOPOROFF: Mark, did you have an offering?

10 MR. FORSETH: I was just going to reiterate,  
11 particularly on behalf of CII, they're based in Florida  
12 and Florida is the home of that recent international  
13 case. I'm sure they would appreciate it being clarified,  
14 in fact, that they are not covered by the rule and don't



1

MR. TOPOROFF: Okay. Now, we'll get onto the

1 environment. We're not talking about the whole body of  
2 law in the area, we're talking about basically just a  
3 few -- as far as I'm concerned, just a few common sense  
4 requirements.

5 Ideally, we would include something about state  
6 law, to check with the state authorities and then we  
7 would also include information about the common problems  
8 of a certain segment of the industry.

9 MR. TOPOROFF: Eric?

10 MR. WULFF: Do you have any data on how many  
11 people who attend trade shows actually read the FTC  
12 required disclosure and any sense of whether that has any  
13 impact at all?

14 MR. TOPOROFF: We don't have specific  
15 statistics. I think that that's fair to say. What I can  
16 tell you is in -- what year was our Minneapolis meeting?

17 MR. TIFFORD: '95. September of '95.

18 MR. TOPOROFF: September of '95?

19 MR. TIFFORD: Yes.

20 MR. TOPOROFF: We met in Minneapolis and a  
21 gentleman, Sam D'amico, who I forget which system he's  
22 involved in.

23 MS. HOWARD: QM.

24 MR. TIFFORD: QM.

1 MR. TOPOROFF: He's QM?

2 MS. HOWARD: Um-hum.

3 MR. FORSETH: Yeah, I think that's right.

4 MR. TOPOROFF: Okay. He basically said that he  
5 prints out these notices and distributes them and finds  
6 them immediately in the trash or on the floor or what  
7 have you. So, I think that it is a valid issue. Who  
8 reads these? I don't know that we'll ever be able to get  
9 that information unless we did some kind of survey. I'm  
10 not sure that anybody has done that.

11 MR. WULFF: My gut instinct is that -- and just  
12 having gone to trade shows as a visitor -- is that you  
13 get a package of materials, you get a batch and it's in  
14 those materials and I don't think a whole lot of people  
15 really even look in the package. Most of it is  
16 promotional stuff. If they do, they flip through it.  
17 So, I don't -- I wonder how effective that is.

18 I also think what Dale said is correct. That  
19 in terms of the educational seminars, that of course is  
20 only for those who want to attend and the turnout may  
21 vary considerably. So, I'm not -- I guess I'm not sure  
22 how effective this kind of effort is likely to be, even  
23 assuming you -- one were to disagree with John's point of

1 view that this is not a media that should be  
2 distinguished from others.

3 MR. TIFFORD: I would say that from my  
4 experience when I was at the Federal Trade Commission  
5 involved with Franchise Rule enforcement that I was  
6 always discouraged by those notices and the efficacy of  
7 those notices. I saw them as having the primary effect  
8 of telling people that you should be getting a disclosure  
9 document. Certainly, if anyone gets a disclosure  
10 document, they don't need the notice because the notice

1           that was the end of it.  Someone would say, I don't have  
2           to give you a disclosure document, I'm not covered by the  
3           rules.  So, then what are you supposed to do with this  
4           notice?

5                         So, my instinct is it just didn't really do a  
6           whole lot of good.  And I would just say in terms of the  
7           concept of giving out disclosure -- giving out this kind  
8           of a notice, I guess my feeling is when you say, should  
9           it be required, I just wonder what -- well, to explore a  
10          little bit about required.

11                        If the question is, would it be a nice idea,  
12          the answer is sure.  Would you hope that trade show  
13          promoters would take it upon themselves to do it?  The  
14          answer is sure, it can't hurt.  But what happens when  
15          they don't do it?  Now, I know of one instance again  
16          where a trade show promoter wound up with a consent  
17          decree because the notice that they gave out didn't have  
18          the exact words they were supposed to have.  It's hard to  
19          see the validity of something like that.

20                        What would be the flip side of not giving the  
21          notice out?  If you do not give the notice out and you  
22          wind up jointly and severally liable, I would say that's  
23          a terrible, terrible remedy for that kind of a  
24          circumstance.  If the flip side is, you know, you pay a

1 fine of \$50, I mean I don't think anyone would take it  
2 seriously.

3 So, I don't know what kind of teeth you would  
4 have for such a regulation that would be sensible.

5 MR. WULFF: You would enjoin them from holding  
6 future shows.

7 MR. TIFFORD: That seems pretty strong.  
8 Anyway, I don't have much use for the notice.

9 MS. HOWARD: It seems to me we're talking about  
10 several different issues here. Do you think perhaps if  
11 we look at each -- although, they're inter-related, I  
12 think it's important to at least share your ideas on  
13 each. I mean, John, you were just talking about should  
14 the Commission require trade show promoters to give out a  
15 notice and we'll disregard whether or not that's  
16 effective or whether it could be made effective.

17 Do other people have thoughts on that?

18 MR. TOPOROFF: That is the issue that's on the  
19 table right now.

20 MS. HOWARD: That is the issue. Should the  
21 Commission require it of trade show promoters?

22 MR. TIFFORD: It seems like such an innocuous  
23 thing to do and it's not all that expensive. So, the  
24 answer is people should be able to do it. I guess I

1 would say before you could really answer that, you would  
2 need to know what would happen if they don't. Under the  
3 present circumstance, I think what happens if they don't  
4 give out the notice under the conditional exemption, it's  
5 a terrible result that's far worse than the --

6 MR. TOPOROFF: Let's put it this way. What  
7 happens if we amend the rule and there is a new  
8 definition and a new section called trade show promoters  
9 and it puts the affirmative obligation of the promoter to  
10 give out some kind of notice or engage in some kind of  
11 educational effort. The violation of that would be a  
12 rule violation, but the violation would be that one  
13 count. Mr. or whoever franchise promoter has violated  
14 the Franchise Rule by failing to give out the required  
15 consumer education notice.

16 MR. TIFFORD: I would say -- I would go back to  
17 my first question which is why are you singling out trade  
18 show promoters.

19 MR. TOPOROFF: Okay. Putting that aside, if  
20 the Commission decided for whatever reason it thought  
21 that show promoters should be singled out, would that  
22 approach work for you?

23 MR. WULFF: It's an improvement over the  
24 current situation, there's no doubt about that. Whether

1           it's really warranted to do something like that, I'm not  
2           so sure that it is quite frankly. I think that this was  
3           a fairly creative way of dealing with the situation with  
4           promoters and getting them out in effect from the  
5           definition of a broker and I think that you can't ask the  
6           question without also addressing the issue of how  
7           effective is it. I mean, those two are inter-related.  
8           And again, I'm not aware of any empirical data on that,  
9           but my instincts tell me that it's not terribly  
10          effective.

11                       MR. TOPOROFF: Any other comments on this  
12          particular point?

13                       MR. TIFFORD: What that would mean, if it were  
14          just a civil penalty, it would mean that you have a  
15          liability of up to \$11,000 for each show, and if you did  
16          it a second time, you're also in contempt of court  
17          because you've signed a consent decree. To me, that's a  
18          pretty strong -- that's a pretty strong stick. And I  
19          would like to know what it is that you're going to get  
20          for that in exchange in terms of consumer benefit. I  
21          don't see it.

22                       MR. CANTONE: I think there's a huge consumer  
23          benefit in giving information. I have to say that the  
24          current notice, I don't find all that helpful. I've



1 personally seen consumers pick it up, see what it is --  
2 some promoters give them one with the tickets actually --  
3 and then it just goes right in the trash. But I think  
4 that real meaningful information is desperately needed  
5 and I think that consumers absolutely want it. It just  
6 has to be presented in a way that, number one, they can  
7 understand; and number two, that tells them what they  
8 need to know.

9                   And I think that however you want to do it,  
10 whether you want to make it as a conditional exemption, I  
11 think in this case, what you're proposing would work.

12                   MR. TOPOROFF: If we hired you as a contractor

1 more than five to ten points of information in bold  
2 print. That's about it. I don't think that consumers at  
3 that point need to know all of the information that's  
4 contained in the actual rule. I think they need to know  
5 there are specific laws, specific problems and where to  
6 go to find out or what to watch out for.

7 MR. TOPOROFF: Okay.

8 MR. CANTONE: And I think it should be --

1 the Commission wants to move ahead and require trade show  
2 promoters --

3 MR. WULFF: It strikes me what Dale has  
4 suggested is likely to be more effective than what is  
5 currently being contemplated. That clearly is so.

6 MR. TOPOROFF: Okay.

7 MR. FORSETH: But then you're talking about  
8 imposing a cost on all show promoters to put up banners  
9 and to bear the cost of preparing the banners to put  
10 those up --

11 MR. TOPOROFF: I understand that.

MR. FORSETH: -- as well as a failure to.

1 MR. CANTONE: On the contrary. On the  
2 contrary. But they're not doing it.

3 MR. WULFF: But that's the reality in which  
4 franchisors live.

5 MR. CANTONE: I have gotten more information  
6 from legitimate sellers who want us -- who want this  
7 information to be out. They want an educated consumer.  
8 The legitimate exhibitors want people to know all of the  
9 rule requirements because there are people who violate  
10 the rule. And it puts them at a competitive disadvantage  
11 to have a consumer who does not know there's this  
12 requirement, who does not know that earnings claims have  
13 to be substantiated. So, the good ones really want the  
14 consumers to know what the rules are.

15 MR. TIFFORD: I certainly think that helps.  
16 But I think that they're -- the way to do it is to make  
17 sure that the public regulatory officials that are  
18 responsible for enforcement of this rule have the staff  
19 and the capabilities to do it and let them take on the  
20 enforcement responsibilities.

21 MR. TOPOROFF: Okay. We're moving on.

22 The next issue is we have talked most of this  
23 morning about the liability responsibilities of the  
24 promoter. I want to switch to the liabilities and the

1 responsibilities for exhibitors on trade show floors.  
2 So, for this discussion, we're talking strictly about the  
3 franchisors, the business opportunity sellers, not the  
4 promoters. So, we're not talking about secondary  
5 liability or anything like that.

6 What responsibility should exhibitors on the  
7 trade show floor have under the rule in terms of -- we  
8 mentioned before that at least the Commission's law  
9 enforcement experience is that we have seen time and time  
10 again earnings issues and other kinds of problems with  
11 respect to the exhibitors. What responsibilities, if  
12 any, should the Commission impose on the exhibitors at  
13 trade shows?

14 MR. FORSETH: Well, those same exhibitors have  
15 the same responsibilities under the rule and if they're  
16 violating the rule -- why are you going to impose  
17 more rules for them to violate I guess is my question.  
18 I mean, the rules are pretty clear about what their  
19 conduct is. Thou shalt not make earnings claims unless  
20 you have a, you know, factual basis and material  
21 assumptions underlying it and set forth in your offering  
22 circular. Thou shalt have an offering circular at the  
23 first personal meeting for the discussion of the sale of  
24 the franchise.

1 I don't think that the behavior at a trade show  
2 should be any different than what the behavior is  
3 generally and putting something else in the rule about  
4 their behavior at a trade show seems to me is  
5 duplicative.

6 MR. CANTONE: The difference is this is a  
7 forum --

8 MR. TOPOROFF: Dale?

9 MR. CANTONE: This is a forum specifically  
10 designed for the sale of franchises or business  
11 opportunities. And I think that the suggestion in the  
12 ANPR that exhibitors have to have a disclosure statement  
13 or a letter from an attorney explaining why they don't  
14 fit within the rule is perfectly legitimate. I think it  
15 would be very helpful and it doesn't seem too  
16 problematic.

17 MR. FORSETH: Well, I guess the problem I have  
18 with that is by having that offering circular in a  
19 position where you're now changing the entire character  
20 of the conversation that's taking place at the trade show  
21 booth and you are now creating a legal event which  
22 constitutes a first personal meeting by changing the  
23 character of the discussion. You're --

1                   MR. FORSETH: I mean, the point is most of  
2 these conversations are very quick, they're very general.  
3 You've got people coming in out of the booth, here's a  
4 brochure. You know, they get down -- they try to get the  
5 name of the person. They're going to call them up and  
6 it's going to be a follow-up lead. And that's when those  
7 discussions for the sale of the franchise are going to  
8 take place and the franchisor then has control over the  
9 first personal meeting if it uses caution as indicated in  
10 the interpretive guides.

11                   Under the circumstance where they're obligated  
12 to have the offering circular, it's sitting there for  
13 public purview, people are going to be stopping to look  
14 at it, they're going to want to talk about it and all of  
15 a sudden, you've just changed the character of the  
16 conversation.

17                   MR. CANTONE: I think you're talking now about  
18 what is available for public inspection as opposed to  
19 having it exist.

20                   MR. WULFF: I think the major challenge for a  
21 franchisor at -- going to an exhibition like this is to  
22 determine when an offering circular needs to be  
23 delivered. I think that's the major uncertainty that  
24 they face. And I think that that may be something

1       worthwhile addressing by the Commission in a practical  
2       fashion. I think -- what Mark has suggested, I think, is  
3       by in large true. The kind of discussion that one  
4       encounters at the booth, at least in my mind, does not



1 MR. TIFFORD: If I might suggest?

2 MR. TOPOROFF: John?

3 MR. TIFFORD: This is typical of lawyers. All  
4 the lawyers are giving the answers and here we have  
5 somebody who actually is at all these shows and runs them  
6 who's not getting an opportunity to talk. Why don't you  
7 tell us, Mike, what happens -- what is the primary  
8 purpose, to the best of your knowledge, that exhibitors  
9 will come to trade shows? What do they expect to happen  
10 on a trade show floor?

11 MR. LUDLUM: They hope to generate leads and  
12 then they hope to close it -- it's usually at a later  
13 time.

14 MR. TIFFORD: Which means? What are they -- do  
15 they expect to carry on a half an hour conversation with  
16 somebody at a booth?

17 MR. LUDLUM: They can't afford to. I had  
18 mentioned earlier that it's just to get a mass of people  
19 to their booth, make a presentation, get rid of them and  
20 bring another mass of people in and expose yourself to as  
21 many people as you possibly can, let them know how to  
22 contact you through brochures that you hand out and then  
23 hope for --

1                   MR. WULFF: And then possibly have seminars  
2 that go along with the show themselves --

3                   MR. LUDLUM: Some of them do.

4                   MR. WULFF: -- where the people who have a  
5 particular interest can come back for further  
6 information.

7                   MR. LUDLUM: That's right.

8                   MR. TOPOROFF: Dale?

9                   MR. CANTONE: So, what's the downside of having  
10 this information -- are you saying that there is a point  
11 where it's too early to have this information available?

12                   MR. TIFFORD: I guess the question really is  
13 what is happening at this booth. Is somebody making a  
14 very solid pitch to buy a franchise from me and  
preconditioning someone so that the sale is done at the

1 many copies of the Maryland UFOC should you have at a  
2 show?

3 MR. TOPOROFF: Let me ask a question. the  
4 specific proposal in the ANPR is not that franchisors or  
5 other exhibitors come with truckloads of UFOCs. The  
6 specific proposal is to have a sample copy in a binder or  
7 some other way so that it can be there, a single copy, a  
8 permanent copy if you will, so that people who do have  
9 some questions might be able to look through it and get  
10 the information.

11 MR. WULFF: A permanent copy at the booth?

12 MR. TOPOROFF: Right.

13 MR. WULFF: So, someone can flip through the  
14 100 pages?

15 MR. FORSETH: So, it's chained to the booth?

16 MR. TIFFORD: I think that we ought to let Mike  
17 give some -- at least initially to start because, I mean,  
18 he runs these shows.

19 MR. TOPOROFF: No, that's fine.

20 MR. LUDLUM: We've actually been required since  
21 the beginning of the year to have the UFOCs or this  
22 letter from the attorneys stating that they're not  
23 required to have one prominently displayed at the booth  
24 and it hasn't worked.

1                   MR. TOPOROFF: Okay. Well, let me just make  
2                   sure I understand that. What was the -- what is your  
3                   requirement now?

4                   MR. LUDLUM: We are actually required to have a  
5                   UFOC or a signed letter from an attorney stating that  
6                   that franchise or business opportunity is not required to  
                  have a UFOC prominently dou.44

1       these to the table. And within minutes of the show  
2       opening, they're either covered up with brochures,  
3       they've been removed and put on the floor.

4               Even the people that try to comply and leave it  
5       there -- if you look at some of the pictures you'll see  
6       that it only takes three or four people in front of the  
7       booth, shoulder to shoulder, to effectively block off  
8       that booth and that table, that if anybody was looking  
9       for it, they couldn't find it.

10              MR. TOPOROFF: Okay. Let me ask you a  
11       different variation on the theme. What happens if you  
12       didn't have a sample copy available, but you had at least  
13       some copies of UFOCs at the show and if somebody  
14       specifically asked for a copy, even if there isn't a  
15       face-to-face meeting. If somebody walked over to the  
16       booth and said, I see here's some sales literature, can I  
17       take that. Yes, you can. Do you have a copy of the  
18       UFOC? Can I look through it? How would that work?

19              MR. WULFF: Well, if you combine that with  
20       Dale's banners, you better pull up the truckloads because  
21       that's what everyone will ask for. If the banner says,  
22       ask for a UFOC, then --

23              MR. TIFFORD: I think we also need to move from  
24       the theoretical to the practical.

1 MR. TOPOROFF: Right.

2 MR. TIFFORD: In terms of what does it mean to  
3 look at this offering circular in the middle of 3,000  
4 people in a hallway in a convention area milling around.  
5 I can tell you I wrote a lot of offering circulars as  
6 does everyone here or review them or whatever. I can't  
7 review these things, and I know what I'm looking for, I  
8 know to skim and I know where to look seriously, within  
9 an hour without -- forgetting the contract, just looking  
10 at the offering circular in my office when I'm able to  
11 concentrate, I can't do it in under an hour.

12 Now, here you have somebody -- maybe other  
13 people can do it faster than I can. I can't. Here you  
14 have a trade show with people who don't have our  
15 knowledge of what franchising is, doesn't know what the  
16 offering circular is, isn't familiar with the terms the  
17 way we are, standing at a booth that is very small where  
18 only four people can get there, has gotten this offering  
19 circular in their hand and now is going to read it. I  
20 mean, what happens --

21 MR. TOPOROFF: Okay. I -- okay. I could  
22 understand that perhaps the casual participant or  
23 attendee at a show who might be going just to scout out  
24 what this is all about, like they would go the car show

1 or the boat show, I could understand that they might not  
2 look through a UFOC or even know what it is, whatever.  
3 But there may be sophisticated buyers, if you will, who  
4 are educated, who are going to the show specifically to  
5 be able to comparison shop, let's say, for the best  
6 opportunities.

7 In that kind of scenario, if they went -- let's  
8 say its me or any of us and I went to Mr. X Exhibitor and  
9 I said, I am looking for a particular franchise in the  
10 restaurant industry, can I look at your UFOC.

11 MR. TIFFORD: All right. There are two answers  
12 to that.

13 MR. FORSETH: I don't think you can keep the  
14 salesperson from eventually giving him one.

15 MR. TIFFORD: There are two answers to that.  
16 If a sophisticated prospective franchisee comes to the  
17 booth and says, I really want to look at your offering  
18 circular, I want to do some comparison shopping because I  
19 see that there are five other restaurant franchisors here  
20 today, I want a copy of your offering circular. And the  
21 salesman says, no, I'm not going to give it to you. But  
22 what I'm going to do is very simple. If you want our  
23 offering circular, let's make an appointment, I'll meet  
24 with you after the show, we'll talk, I'll give you the

1 offering circular and you can look at it then. But I'm  
2 just not handing it out.

3 Now, here's two choices. Just let the market  
4 take care of this. Either the sophisticated purchaser  
5 turns around and says, well, I'm not interested in you  
6 and will leave, in which case there's been no damage to  
7 anybody, or the sophisticated purchaser will do what,



1 is not likely to have any impact whatsoever on consumer  
2 injury one way or the other.

3 MR. TOPOROFF: Dale?

4 MR. CANTONE: Well, it would -- I think you --  
5 there's a legitimate question about what will have to be,  
6 when will it have to be provided and all that. But let's  
7 step back to the fact that it exists. To have a copy of  
8 a disclosure statement that exists or a letter stating  
9 why they don't require it, I think that part at a minimum  
10 is helpful.

11 Now, whether or not they have to then give  
12 copies to everybody who walks by or have just a  
13 permanently attached one copy, I think is a separate  
14 issue. And I can see some real problems with, you know,  
15 giving a disclosure statement to everyone who asks. On  
16 the other hand, I can't imagine that these people are  
17 going to ask for copies unless they're legitimate buyers  
18 when they see what they're getting.

19 MR. FORSETH: And you see people walking  
20 through those trade shows and they're on their Sunday  
21 thing with the huge baggie and picking up a brochure from  
22 every company that they walk past. I mean, it's --

23 MS. HOWARD: What if instead of having it right  
24 there at the trade show -- not theoretically, but

1           practically, if that same individual comes up and says,  
2           you know, I'd really like a copy of your UFOC, will you  
3           send me one, here's my card. Is the franchisor going to  
4           do that or are they --

5                       MR. WULFF: Of course.

6                       MS. HOWARD: -- going to require well let's get  
7           together and we have to meet.

8                       MR. TIFFORD: It depends on the franchisor.

9                       MR. WULFF: Most franchisors are interested in  
10          taking that relationship to the next step. And that's a  
11          legitimate question and if someone is seriously enough  
12          interested that he wants it, I think most franchisors  
13          would give him the UFOC. Some franchisors may have a  
14          proprietary sense about the document, which quite frankly  
15          I think is misplaced, and will not give it unless you  
16          jump through a bunch of hoops. But I think they're a  
17          minority.

18                      MR. FORSETH: Some franchisors want to  
19          prequalify prospects beforehand. So, what they will do  
20          is you hand them a business card -- and this is just  
21          practicality speaking -- then they'll send you their big  
22          brochure which has all the information -- you know, their  
23          promotional information and a franchise application and  
24          it says, come back and tell us how much you make, what

1 your experience is, whether you're a qualified prospect  
2 or not and we'll make a determination.

3 And when they receive that information back if  
4 it's a qualified prospect, then they'll forward an  
5 offering circular. If it's not a qualified prospect,  
6 they'll send him a later saying thank you very much for  
7 your interest, but you don't meet our minimum criteria.

8 MR. TIFFORD: But you see in all cases it's  
9 left to the franchisor. If the franchisor wants to give  
10 an offering circular, then they give an offering  
11 circular. If they don't and they make sure that they're  
12 not having first personal meetings, then they don't and  
13 it's left to the franchisor to make their own decision.

14 MS. HOWARD: Well, what if it were not left to  
15 the franchisor? I mean, this isn't anywhere and this is  
16 just a totally hypothetical. If part of the rule said,  
17 at a trade show if someone walks up and wants a copy, the  
18 franchisor is required to send them a copy. Is that an  
19 onerous burden?

20 MR. TIFFORD: Well, yes, because these offering  
21 circulars are expensive. They're probably a minimum of  
22 about 200 pages. You could collect -- I don't know, God  
23 knows -- how many people are at show? 3,000 to 12,000?

1                   MR. LUDLUM: I think you find most -- somebody  
2                   said earlier that most attendees just typically walk by  
3                   and it's like a vacuum. They'll pick up everything  
4                   there. And if they have the opportunity to send away for  
5                   something, just out of curiosity, they'll do that. I've  
6                   worked for a franchisor for a while and I know that we  
7                   prequalified also before we handed out the offering  
8                   circular.

9                   MR. FORSETH: We figured it's about 20 bucks a  
10                  copy, 20 or 25 bucks a copy depending on what it is, how  
11                  big.

12                 MR. TOPOROFF: On a slightly different issue,  
13                 if the concern of the Commission is not necessarily  
14                 disclosure per se but earnings issues, companies that  
15                 exhibit, be they franchisors or bus op promoters, if  
16                 they're making earnings claims at the trade show on the  
17                 floor, what kind of provisions could the Commission  
18                 conceivably create to reign in the making of false or  
19                 unsubstantiated earnings claims at a trade show?

20                 MR. TIFFORD: Well, I think --

21                 MR. TOPOROFF: If we don't want to give out a  
22                 whole -- if we don't want to force a franchisor to give  
23                 out the whole disclosure document, is there something

1           that we can do that is narrowly focused on the earnings  
2           issue?

3                         MR. TIFFORD: Well, I think this raises the  
4           same issue that has been raised in comments and that Mark

1 document on the floor and if they haven't gotten it the  
2 next day, they going to get it at sometime. But now  
3 they've gotten the document, still the violation exists.

1 he's making \$100,000, I'd like to see it. And then come  
2 back and let me know what he tells you, because I think  
3 the man is lying and I'm going to tell the promoter and  
4 we're going to have him arrested. I don't see what's  
5 wrong with an answer like that. And I think that would  
6 be a -- you know, I don't see what's wrong with that  
7 answer.

8 MR. WULFF: I think that the --

9 MR. CANTONE: So, you want to give us the  
10 arrest capability now?

11 MR. TIFFORD: That's fine with me.

12 MR. CANTONE: Let me write that down.

MR. TOPOROFF: Eric?

1           that is not the best. And I think to the extent that it  
2 happens at trade shows, it's probably happening in other  
3 venues where they're selling franchises. And ultimately,  
4 they will bear the responsibility for that.

5                   MR. TOPOROFF: Okay.

6                   MR. WULFF: But I'm not sure I can come up  
7 with -- well, should the promoter then when -- be  
8 required to collect offering circulars before the  
9 exhibitor shows -- to see if they have an earnings claim  
10 or not and if they don't have an earnings claim --

11                   MR. TOPOROFF: We're not talking about the  
12 promoters right now.

13                   MR. WULFF: No, I understand.

14                   MR. TOPOROFF: We're talking strictly about the  
15 exhibitors and what we could possibly do to either arm  
16 prospective buyers with information beforehand or  
17 otherwise reign in the making of the illegal claim.

18                   MR. WULFF: I suppose you could say, no one is  
19 supposed to make any earnings claim at a trade show. But  
20 I don't think that that's fair for the companies that  
21 choose to make earnings claims and can lawfully make them  
22 at the trade show. I've had a client who, in fact, put  
23 up a sign with its earnings claim because it was all  
24 substantiated.



1                   MR. TOPOROFF: Now, that client at the show  
2 that puts up the sign, does he have a UFOC or other kinds  
3 of documents?

4                   MR. WULFF: Yeah.

5                   MR. TOPOROFF: And if somebody discusses it, he  
6 gives them out immediately?

7                   MR. WULFF: I don't know if it goes out  
8 immediately, but the way that they dealt with it was for  
9 the serious prospects they would have seminars afterwards  
10 and at those seminars, those serious prospects would get  
11 the UFOCs. And that was a practical way of handling it.

12                   MR. TOPOROFF: Dale?

13                   MR. CANTONE: I think the State of Maryland  
14 would have a problem with that, with just a sign that  
15 says, even if it's substantiated, \$100,000, because in  
16 and of itself, an earnings claim on a banner over a booth  
I think could conceivably be misleading when it's not in

1 MR. WULFF: So, you're saying that one should  
2 not make earnings claims outside of a UFOC?

3 MR. CANTONE: That's what I'm saying.

4 MR. FORSETH: Well, the regulations in Maryland  
5 permit you to do it in advertising and there's just  
6 additional disclosure that you might have, but there's  
7 nothing that prohibits you from making one in  
8 advertising. And even under the rule -- the Media Claims  
9 Rule -- I mean, if you have -- you're entitled to make  
10 earnings claims as long as -- under the Media Claims Rule  
11 is it, John, number and percentage?

12 MR. TIFFORD: I think so. I guess what I would  
13 say to Dale and the same thing that I would say to the  
14 FTC, what is the problem that you're trying to address if  
15 someone were to make an earnings claim at a trade show  
16 floor if, in fact, they subsequently give a disclosure  
17 document, which they must? I mean, this problem becomes  
18 self-corrected during the -- very early on into the sales  
19 process. As soon as there's a first personal meeting,  
20 they need to get the offering circular and they need to  
21 have that earnings claim in there.

22 Obviously, if they're in violation, they're in  
23 violation. You don't need any special rule about that.  
24 But if we're talking about the people who have the right

1 to make earnings claims and they have them in their  
2 offering circular and they want to get up on the floor of  
3 the trade show and say, you can make \$2,000 a week, I  
4 don't see where the injury is. What is the risk that  
5 they're addressing?

6 MR. TOPOROFF: I don't think that what you're  
7 describing is the concern. I think what our concern is  
8 where you go to a show and there's a bus op promoter or  
9 whoever and they are making what are essentially false  
10 outrageous types of claims where there is no reasonable  
11 basis, they never have substantiation, they don't -- they  
12 probably don't have a UFOC or --

1           ought to have some people down there, walking around the  
2           booths and listening to them.

3                   MR. TOPOROFF: Well, there's always a balance  
4           between law enforcement and regulation. I understand  
5           that.

6                   MR. WULFF: Right.

7                   MR. TOPOROFF: I understand that. Let me  
8           ask --

9                   MR. WULFF: I think the regulations are there.  
10          I think it's a question of enforcement is what it really  
11          comes down to.

12                   MR. TOPOROFF: Okay. Let me ask Dale. Based  
13          upon your experience and your office's experience, do you  
14          think that the rule could be clearer in terms of what  
15          constitutes a personal meeting, in particular, at trade  
16          shows?

17                   MR. CANTONE: I think probably so. I've had  
18          some questions from exhibitors saying that they were a  
19          little unclear about what exactly they could do. And I  
20          think there might be kind of a standard answer to that  
21          and it is in my own opinion, under Maryland law, going up  
22          to an exhibitor and talking to that exhibitor may not  
23          trigger -- may not necessarily trigger the disclosure  
24          requirements. But taking them into a back room for

1 example and having a one-on-one discussion with them  
2 probably would. But I don't know that it's all that  
3 clear under the current rule.

4 So, I do think that there is some room for  
5 clarification.

6 MR. WULFF: I would concur with that.

7 MR. FORSETH: So would I.

8 MR. TOPOROFF: John?

9 MR. TIFFORD: Yes, I agree. I think that's  
10 basically the advice most franchise counsel give to their  
11 people. If you're sitting -- if you're on the floor and  
12 people are walking back and forth, that's not a first  
13 personal meeting. That's not your purpose. I think as  
14 Mike had said the purpose is just to get a lead. When  
15 you take them off -- someplace off and you have a one-on-  
16 one conversation, you've changed that completely.

17 MR. TOPOROFF: So, that might be at least one  
18 area where the rule or the interpretive guides, whatever,  
19 could be clearer.

20 MR. WULFF: Yes.

21 MR. FORSETH: Yes, I would agree.

22 MR. TIFFORD: Yeah, I think so.

23 MR. FORSETH: And I think that some of the  
24 clarification might be is clarifying what constitutes a

1 discussion for the sale of the franchise and maybe  
2 clarifying it that it is a discussion of the specific  
3 terms of the sale of that franchise to that particular  
4 franchisee. So, you need to get into subjective terms of  
5 territory, price, you know, those kinds of specific  
6 terms.

7 MR. TOPOROFF: Well, let's use earnings issues  
8 as an example. The Commission's policy has been, and I  
9 think it's right, that if an exhibitor and a consumer  
10 start talking about earnings issues that that becomes a  
11 substantive discussion. They -- there's probably nothing  
12 more substantive than how much could you make and what's  
13 this company all about. So, I think as a matter of  
14 policy, the Commission's view is if you start down that  
15 road in talking about earnings claims or earnings  
16 representations, that does become a personal meeting.

17 MR. FORSETH: Um-hum.

18 MR. TOPOROFF: I mean, does that need to be  
19 clearer in the rule?

20 MR. TIFFORD: I don't think it needs to be  
21 clearer because I think that while these are conceptually  
22 very interesting issues, I think as a practical matter it  
23 just doesn't work that way. I think two things to keep  
24 in mind here are, number one, franchisors want to sell

1 franchises and they can't sell them until they've given  
2 on offering circular to somebody. So, it's to a  
3 franchisor's interest to give out offering circulars as  
4 soon as they think they have a live one there. So, you  
5 just don't have the problem as a practical matter.

6 And secondly, I don't think -- I think the  
7 Commission sometimes feels maybe there's a concept of  
8 preconditioning that they -- by the time they get the  
9 offering circular, they're not going to -- you know,  
10 they're very presold, they're not going to look at it.  
11 I've just never seen that to be the case, certainly not  
12 in the sale of franchises. You have to wait ten days,  
13 you've got this big document there.

14 MR. TOPOROFF: And again, I'll get back to it.  
15 I really think that there's a distinction between  
16 franchisors especially the kind that you represent and

1                   MR. TIFFORD: Oh, I agree with you completely.  
2                   But the point is that you hope the law is there. You  
3                   have all the power and all the laws you need. These  
4                   people are violating the law as it is. You don't have to  
5                   refine anything to have the power to go after these  
6                   people. And the refinements are only going to go after  
7                   the people who are trying to do it right and acting in a  
8                   way where it's not necessary for them.

9                   MR. WULFF: One thing I would disagree with  
10                  John's comments on is the idea of preconditioning. I do  
11                  think that occurs. And I think if you get someone  
12                  excited about an opportunity based on oral  
13                  representations, the fact that you then in the documents  
14                  say we don't make it, in their mind those numbers are  
15                  important in their decision and I don't think having a  
16                  disclosure on page 37 of the UFOC that says we don't make  
17                  these claims wipes out those representations. I don't  
18                  think that that's true.

19                  MR. TIFFORD: But we have a law enforcement  
20                  violation right there because you've made an oral  
21                  earnings claim that's inconsistent. So, the law is there



1 MR. CANTONE: No.

2 MR. TOPOROFF: Okay. Just very briefly and  
3 then we'll take another break and then we'll wrap this up  
4 with the last discussion on voluntary steps. Is there a  
5 distinction or should there be a distinction between the  
6 typical trade shows that we have been talking about and  
7 the permanent one, Merchandise Mart in Chicago, is there  
8 a distinction between a promoter, let's say, that has on  
9 any weekend or any time during the week various  
10 exhibitors coming and going versus one that's permanent  
11 and is much more hands-on involved in seeing what  
12 actually goes on on the show floor and who's coming and  
13 who's going in terms of the exhibitors.

14 And since John is representing Merchandise  
15 Mart, I'll ask him for his view on that

16 MR. TIFFORD: Well, I think the answer is it's  
17 clear that two comments have been filed, one on behalf of  
18 Entrepreneur, which is primarily involved in the weekend  
19 shows, and the other on behalf of Merchandise Mart which  
20 has a permanent facility. Essentially, the only  
21 difference is the name. The comments are basically the  
22 same. I thought very hard and long about what are the  
23 differences. I haven't come up with any of them nor have  
24 they.

1                   So, I would say you really are talking about  
2 basically the same issues that arise with them arise with  
3 the people like Entrepreneur and Blenheim and CII.

4                   MR. WULFF: It may be a circumstance where the  
5 suggestion that Dale made in terms of having banners and  
6 so on where that may be an undue cost and burden for the  
7 weekend promoter wherefore the permanent exhibitor that  
8 that may be something that's much more practical.

9                   MR. TOPOROFF: At the permanent show, does the  
10 promoter have an office there that consumers arguably  
11 could go in --

12                   MR. LUDLUM: Not so much an office as a -- oh,  
13 I'm sorry.

14                   MR. TIFFORD: At the permanent ones?

15                   MR. TOPOROFF: Permanent one.

16                   MR. TIFFORD: At the moment, they don't have a  
17 room that would be specifically dedicated to that -- as  
18 sort of a reading room, no, they don't. That would be  
19 space that would be permanently dedicated to displaying  
20 information and it would cost money to do something like  
21 that.

22                   MR. TOPOROFF: When I toured the facility way  
23 back --

24                   MR. TIFFORD: Yeah.

1                   MR. TOPOROFF: I can't even remember when it  
2 was. It was in its infancy. And there was a particular  
3 -- Dale, were you there?

4                   MR. CANTONE: Yeah, I thought there was an

1 MR. TIFFORD: But I don't exactly know what the  
2 relationship is between various affiliates. I don't see  
3 how it -- I don't think it makes a difference to  
4 consumers. My instinct is it doesn't make a difference.  
5 Consumers are going to get information about a  
6 prospective franchise investment and this is a location  
7 where they can get information. And that's what they're  
8 doing.

9 MS. HOWARD: Well, how about --

10 MR. TIFFORD: I'm sorry.

11 MS. HOWARD: No, that's all right.

12 MR. TIFFORD: It doesn't make a difference  
13 whether it's there permanently or whether it's there just  
14 the weekend. It's basically the same thing. It's  
15 serving the same purpose.

16 MS. HOWARD: I understand how it serves the  
17 same purpose, but I'm just wondering because it's  
18 permanent, would there not be a lack of that sort of  
19 urgency? I mean, on a weekend, you've got to get people  
20 in and out as quickly as possible because you're only  
21 there for two days. So, the fact that perhaps people are  
22 going to the permanent exhibit and they've got days.  
23 They could keep coming back day after day or they could  
24 stay longer and spend more time at each exhibit.

1 MR. TIFFORD: But many of them are not even  
2 staffed, they're just booths. Sometimes they have a  
3 phone there and you can call. Sometimes you just pick up  
4 information and contact them.

5 MR. TOPOROFF: The booths are not staffed?

6 MR. TIFFORD: Not always.

7 MS. HOWARD: What current percentage? Do you  
8 have an idea?

9 MR. TIFFORD: I just don't know the exact  
10 percentage. But they're not fully staffed, not at all.  
11 They're just fixed displays for someone to get  
12 information about.

13 MR. TOPOROFF: Well, I think that that's a --

14 MR. TIFFORD: The facility is there for the  
15 purpose of --

16 MR. TOPOROFF: -- critical distinction.

17 MS. HOWARD: Yeah.

18 MR. TIFFORD: The facilities are there to be  
19 able to meet with people also. I mean, the franchisors  
20 have the ability to meet with prospects there, there's no  
21 question about it. But I don't believe that -- they  
22 don't have salesmen there at all times.

23 MR. TOPOROFF: And isn't there also a  
24 distinction in the level of control? I could understand

1 at a weekend trade show that moves from city to city and  
2 again the exhibitors come and go and it might not be the  
3 same today or tomorrow, whatever. Isn't there a  
4 distinction between that and the type of control that a  
5 permanent exhibit would have where the promoter -- and I  
6 would assume and I could be wrong, but it would seem  
7 logical to me to assume that the promoter has a better  
8 understanding of complaints about the exhibitors or other  
9 kinds of issues or certainly observes by just walking on  
10 the show floor on a daily basis -- I assume this is open  
11 seven days a week, five days a week.

12 MR. TIFFORD: I don't know the hours of  
13 operation, but I think it's pretty much of a fixed  
14 location where people can come and get information and  
15 then make arrangements to talk to the franchisor  
16 personally. I don't think that the promoter has any  
17 greater or worse control over anybody. They're not  
18 sitting in on any sales negotiation, they're not involved  
19 in that. Many of them don't even occur on the premises.  
20 Many times there's no individual from the franchise who  
21 are even there, at least initially.

22 MR. TOPOROFF: Well, I think that that's why  
23 there's a critical distinction. If it's just a booth  
24 with literature, that's not all that much different than

1 reading information in a magazine. I mean, there's no  
2 representations, there's no discussion, there's no face-  
3 to-face meeting. If, in fact, there are salesmen there  
4 and they do engage in discussion or the flip side is if  
5 some the posters or displays or whatever do make earnings  
6 representations or other kinds of representations, then  
7 it would seem to me in the permanent display, then the  
8 promoter at least is probably much more aware of what's  
9 going on on a daily basis then let's say one of the  
10 typical shows that comes and goes.

11 Is there more control and more awareness of  
12 what is going on?

13 MR. TIFFORD: I don't believe that there is and  
14 I don't believe that Merchandise Mart believes it has any  
15 control over any of those exhibitors in that kind of a  
16 context. They don't know what goes on during these sales  
17 presentations and there's no meaningful way that they  
18 could.

19 MR. TOPOROFF: Anybody have any thoughts on  
20 that subject? Carolyn?

21 MS. COX: No. I had a question on another  
22 issue though.

23 MR. TOPOROFF: Okay. Go ahead and then we're  
24 going to break.

1 MS. COX: Okay. We've talked about the  
2 benefits and costs of requiring a specimen copy of the  
3 disclosure document available at the trade shows. Any  
4 thoughts as to the benefits and costs associated with  
5 having a letter from the attorney saying that they're not  
6 covered by the rule for whatever reason? Because that's  
7 also part of the proposal.

8 MR. TOPOROFF: I mean, the proposal is you  
9 would have one or the other.

10 MR. TIFFORD: I don't know what benefit the  
11 letter would be. I'm trying to think of how you would  
12 write a letter like that. Clearly, the relationship can  
13 be established either through writings or -- so at the  
14 minimum, the letter is going to say -- any intelligent  
15 attorney is going to say, based upon the written  
16 materials, because I have absolutely no knowledge or  
17 control over what someone orally says. Based upon the  
18 written materials presented to me, this is not covered by  
19 a law.

20 Now, how that is any benefit to anybody, I  
21 don't really know and it certainly can be changed by an  
22 oral representation.

23 MR. TOPOROFF: Well, wouldn't it be at least --  
24 if you raise the issue that this is really a law



1 enforcement one, it's not a question of regulation,  
2 wouldn't it at least be helpful to law enforcement to be  
3 able to go in and if they see a booth that might be  
4 questionable that they ask either for the UFOC or a  
5 letter and at least if they get a letter, it gives the  
6 law enforcer at least some confidence or some assurance  
7 that at least this exhibitor has thought about the issue  
8 and an attorney has reviewed this. It could still be an  
9 outright lie, but we're talking in shades of degrees.  
10 And if a law enforcer is visiting a show and there are X  
11 number of booths and it's questionable where should the  
12 time be allocated and would it make more sense to have  
13 that at least to give some comfort.

14 MR. TIFFORD: I think if I was a law  
15 enforcement official and I asked for someone's disclosure  
16 document and they said, we don't have it, we're not  
17 covered by the law, I wouldn't be any more or less  
18 impressed if they handed me a letter from an attorney  
19 that said, this company is not covered by the law. I  
20 would need to make my own independent evaluation based  
21 upon what I hear and what I see and I don't think that  
22 for a law enforcement official it would make any  
23 distinction whatsoever whether or not some -- whether a  
24 lawyer has said it.

1 MR. TOPOROFF: Dale, any thoughts on that?

2 MR. CANTONE: I think law enforcement does have  
3 an obligation to go beyond that letter, but I think at a  
4 minimum it gets us to the point where someone either is  
5 going to have the disclosure statement or at least a  
6 reason why they don't have the disclosure statement and  
7 it would be an enormous help to me, as a law enforcement  
8 official, if I could go to a booth and ask for one or the  
9 other of those items to just verify that they've got  
10 disclosure.

11 And also in Maryland, of course, there's a  
12 registration requirement. So, if I had a letter and  
13 could take a look at the letter as to why they don't need  
14 to be required to provide that disclosure statement, it  
15 gives me a starting off point if I choose to go further.  
16 It's a wide -- and if the answer is, we don't provide  
17 location assistance, then you know I could choose to say  
18 well that's the reason and go on, or --

19 MR. WULFF: But you're assuming that that  
20 letter has an analysis of the issue. I mean, is that

1 MR. WULFF: -- that says, Acme Company is not a  
2 franchise or a business opportunity, very truly yours.

3 MR. CANTONE: You're right. I don't think  
4 there is that requirement under the law.

5 MR. TIFFORD: There isn't.

6 MR. CANTONE: But there's a requirement under  
7 the law that they have the disclosure statement. Well,  
8 what do you do then if they say I'm not required. Then  
9 you're back at square one where, you know, why don't they  
10 have a disclosure statement.

11 MR. TIFFORD: But that's the point that Eric  
12 and I are making. The fact that someone has handed you a  
13 two-sentence letter doesn't mean a thing. It simply says  
14 that -- you know that they don't have the disclosure  
15 document because you've asked them for it and the  
16 salesman may not be able to articulate why he doesn't  
17 have it. He's simply going to say, we don't have an  
18 offering circular. And then you know your answer. And  
19 the next issue is you need to discern whether you should  
20 or not and that lawyer's letter is not going to change  
21 anything one way or the other.

22 MR. CANTONE: If someone was interested in  
23 finding out if somebody has a disclosure statement,  
24 whether it be law enforcement or a promoter or a

1 consumer -- well, that's kind of the situation we have  
2 now. That's good enough is what you're saying?

3 MR. TIFFORD: I mean, just ask, do you have an  
4 offering circular. The letter doesn't really change it.  
5 Either they have one or they don't have one.

6 MR. CANTONE: Well, the benefit it does have  
7 is -- I suppose there's a cost related -- that is that  
8 somebody has done an analysis who is a lawyer. Because  
9 in many cases, I'm going back again to the business  
10 opportunity arena, you have people who do not hire  
11 lawyers and they make these disclosures on their own.  
12 They make the analysis on their own about whether or not  
13 they do or do not need to comply with the rule and in  
14 many cases, they're wrong.

15 And a lawyer, I would hope, gives some more  
16 thoughtful analysis to the whole issue about whether or  
17 not somebody fits within the rule than someone who is not  
18 a lawyer and that's the benefit.

MR. WULFF: I think the rule should say that

1 MR. TOPOROFF: Okay. On a happy note, does  
2 anybody else have any comment? Otherwise it's break  
3 time.

4 (No response.)

5 MR. TOPOROFF: Okay. We'll take a break.

6 **(Whereupon, a brief recess was**  
7 **taken.)**

8 MR. TOPOROFF: We're back on the record. We're  
9 going to move to the last section of agenda. I have an  
10 hour designated for this topic, but I have a feeling that  
11 we're going to get through this a little quicker than  
12 that.

13 We have talked about issues of liability and  
14 what should be disclosed and what shouldn't be disclosed.  
15 In this section, we're talking about voluntary steps and  
16 in particular whether trade show promoters and the  
17 Federal Trade Commission and/or NAASA could get together  
18 informally as a partnership and think of creative ways  
19 that, short of law enforcement and litigation, that we  
20 might be able to do something to alleviate some of the  
21 problems that we have seen and some of the concerns that  
22 we have about trade shows.

1                   So, the first item is just a -- there are two  
2 trade shows really being represented here, Entrepreneur  
3 and CII. So, to that extent --

4                   MR. TIFFORD: Temporary. Temporary trade  
5 shows.

6                   MR. TOPOROFF: Temporary. Oh, okay. Now, we  
7 have another one, we have Merchandise Mart. Okay. So,  
8 at least we have three.

9                   And for this purpose, I think all three are  
10 equal. That is would your clients or the companies that  
11 you are here to represent be willing to work with the  
12 Federal Trade Commission and/or again NAASA in some kind  
13 of voluntary partnership? I don't know exactly what that  
14 would look like or what we would do. But as a  
15 preliminary cut -- and I'm not putting you on the spot.  
16 I mean, if the answer is no that you have better things  
17 to do then that's fine.

18                   MR. FORSETH: How about if the answer is I  
19 don't know without asking them?

20                   MR. TOPOROFF: Okay. John, do you have a sense  
21 from your client?

22                   MR. TIFFORD: I think for instance Merchandise  
23 Mart has worked very closely with the State of Illinois  
24 now in terms of putting together their permanent display

1 and the way they operate that. And I have no doubt --  
2 you can speak better than I -- but I have no doubt that  
3 Entrepreneur would be more than happy to work with the  
4 FTC and any states to --

5 MR. TOPOROFF: Well, let's get it directly  
6 from --

7 MR. LUDLUM: Again, without knowing what's  
8 involved, I would be happy to help out.

9 MR. TOPOROFF: Okay. Dale, from NAASA's  
10 perspective?

11 MR. CANTONE: Absolutely. I mean, we find it  
12 much, much more effective to be working with promoters  
13 than to be working against them. And just generally the  
14 type of things that we would only ask for is, number one,  
15 advance notification of when you come into the state. I  
16 think the other issue about having the disclosure  
17 statement or maybe an explanation of why is helpful.

18 But we have asked many promoters or several  
19 promoters, just let us know when you come into the state.  
20 We're not asking anybody to do any law enforcement  
21 obligations for us. I mean, we are more than happy to do  
22 that. But considering staff issues, I mean, we don't  
23 always canvas every paper, we don't always have advance  
24 notification. If we know somebody is in town, we will

1 take steps, not only law enforcement but in Maryland  
2 registration steps. I've had examiners work overtime  
3 when they find out somebody is at a show to make sure  
4 that the exhibitors are registered because that's one of  
5 the concerns.

6 So, work with us, help us out and I think it  
7 would be productive on both sides.

8 MR. TIFFORD: Excuse me, Dale, if I could just  
9 follow up a little.

10 What happens when a trade show promoter  
11 contacts you say seven days in advance and says this is  
12 my list as of today of who's going to be attending and  
13 there are ten people who are going to be attending and I  
14 have the disclosure documents of six of them and these  
15 six claim they're in Maryland, but obviously you can  
16 check, and these four people have told me they're not  
17 covered.

18 MR. CANTONE: It has happened in Maryland. And  
19 what happens, we go back to the promoter and say -- this  
20 happened to be one of the cooperative promoters and again  
21 I'm not saying that they all currently are or will always  
22 be, but this was a relatively cooperative promoter. We  
23 went back to him and said, of the list that you gave me



1 of 40 promoters, half of them aren't registered. Now,  
2 these are mostly business opportunities.

3 And we said, if they're not registered and  
4 they're selling at the show, we have the ability to do a  
5 cease and desist order. We would be more than happy to  
6 work overtime to get them registered. And we did. And  
7 as a practical matter, that's when this examiner worked  
8 overtime and got almost all of them registered who were  
9 willing to register.

10 So, the promoter went back to them and said,  
11 you're not registered with Maryland, call them and find  
12 out why. And then we started the discussion and we were  
13 able to work it out and they still had quite a few people  
14 at the show and everyone they had at the show was  
15 registered.

16 MR. TIFFORD: Well, now, in that -- just to  
17 follow up that process. It sounds like a wonderful way  
18 of doing it. A lawyer calls you for one of the bus ops  
19 and says, we're not registered because we don't have to  
20 be registered. Then you would have a conversation with  
21 him to determine whether he should or shouldn't?

22 MR. CANTONE: That's right. And if he says,  
23 this is why, then we make no -- you know, that's fine. I  
24 mean, if we find out later it's not the case or there are

1 misrepresentations or representations, then that's up to  
2 us to do the appropriate follow-up.

3 MR. TOPOROFF: Getting to specifics, in terms  
4 of consumer education, what voluntary measures would seem  
5 appropriate in terms of the sponsors of the trade shows?  
6 We talked before about the consumer education notice,  
7 whether that is the most effective way to go or not.  
8 What are some possibilities, again, from the promoter's  
9 position, what could be done to increase consumer  
10 education in a meaningful way at the shows?

11 MR. TIFFORD: Well, let's just review. What  
12 does Entrepreneur do right now?

13 MR. LUDLUM: We don't always offer the same  
14 workshops at each show, but some shows have buying a  
15 franchise, that we conduct an hour long session on how to  
16 buy a franchise. That's done once each weekend though.  
17 So, chances are you're going to miss it if you come.

18 MR. TIFFORD: So, would every show pretty much  
19 have at least one seminar?

20 MR. LUDLUM: Not always. It's difficult to  
21 find somebody that will speak on that. You know, if we  
22 had a source, if we could go to a state office and they  
23 could volunteer a speaker, we would certainly include  
24 that.

1                   MR. TIFFORD: And you also give out a consumer  
2 education notice when everyone walks in the door?

3                   MR. LUDLUM: That's right.

4                   MR. CANTONE: Can I ask that if it was  
5 available from Federal or state or Federal and state  
6 authorities like a videotape on a continuous loop of  
7 information that you should know if that might be

1 can set up and they're used for our own purposes to sell  
2 things and for more informational type things.

3 MR. CANTONE: But do you think you need an  
4 individual person there giving the information?

5 MR. LUDLUM: No, I'm not sure that either one  
6 of them would be effective. It's corralling these  
7 people -- I guess the basic education of letting them  
8 know what is the most benefit to them, I think would be  
9 most beneficial.

10 MR. TOPOROFF: Let me offer this: we have a  
11 Division of Consumer Business and -- Office of -- what's  
12 it called? The Office of Consumer and Business  
13 Education. Who have expertise in crafting educational  
14 brochures, fliers, whatever might be required. And  
15 typically, when the Commission forms partnerships with  
16 industry groups, what we try to do is focus on what are  
17 the most important messages to get out, what are the key  
18 core issues, warnings or advice that we want consumers to  
19 know. I don't think that we're going to necessarily  
20 figure out what those messages are here and it might vary  
21 from show to show, whether a show is more a franchise  
22 show as opposed to a business opportunity show.

23 But one possibility is -- number one, I would  
24 like Mark to go back to his client and find out or at

1       least let us know if they would be interested in this  
2       partnership; and two is, assuming that Mark is on board  
3       and we have some others and the partnership again could  
4       grow, we could certainly get in touch with Blenheim and  
5       SC Promotions and QM and whoever else may come along down  
6       the pike. What we can do is have follow-up meetings  
7       where we could think about this and come up with the two  
8       or three messages that might be more beneficial to  
9       consumers and then think of some kind of campaign or some  
      wy c-8

1 get back to your respective clients try to figure out  
2 what kind of messages or what kind of -- the approach  
3 that they might want to take.

4 As far as earnings claims go at a show, I  
5 understand that -- from our discussion this morning and  
6 from other sources that it's a tough nut to crack because  
7 it could very well be that the exhibitor has  
8 substantiated earnings claims in their UFOC and there  
9 could be absolutely nothing wrong with making earnings  
10 claims at the show. It could be that scenario all the  
11 way to outright false earnings claims.

12 Is there something, again, a voluntary approach  
13 that we could take that would better either educate  
14 consumers about earnings claims or reduce the level or  
15 number of unsubstantiated or false earnings claims at a  
16 show? Is there any voluntary approach that we could take  
17 that could target or get at that issue?

18 MR. TIFFORD: I would just say that the --  
19 well, the answer is to some extent the question because  
20 there are many ways in which franchisors sell franchises  
21 and these earnings claims will exist -- the problems with  
22 earnings claims will exist in every one of these  
23 vehicles. And to try to say is there something special  
24 about a trade show that's different from a media ad or

1           whatever, I don't think that there is and I think that  
2           you're going to -- I'm not confident we're going to find  
3           any kind of vehicle that's going to be especially  
4           effective and I don't think that the Commission or any of  
5           the states need any additional legislation or any  
6           additional rule amendment to be able to effectively  
7           enforce as they have in the past any violations of this.

8                         MR. TOPOROFF: Right. So, that's why right now  
9           we're not talking about rule amendments or law  
10          enforcement. We're talking about voluntary means that we  
11          could all work on to either get out the message or  
12          whatever to try to tackle this problem. Now, we may not  
13          be able to solve all the world's problems, but maybe we  
14          could take a little bite out of the corner that will have  
15          a significant impact and benefit for consumers.

16                        Myra, do you have any questions on that?

17                        MS. HOWARD: On the earnings claims?

18                        MR. TOPOROFF: Yeah.

19                        MS. HOWARD: I guess my comment or question  
20          would be if we can't think of things right now if we can  
21          sort of continue the process and see if we can come up  
22          with something.

23                        MR. TOPOROFF: Dale?

1                   MR. CANTONE: Earnings claims are a very tough  
2 nut to crack, I will tell you that. And I think it's  
3 going to take some thought. I don't have any quick  
4 answers for it. I think the promoters on their own can  
5 take a look at what goes on in the shows, they can  
6 certainly walk around, and just be careful of banners  
7 that say \$100,000 or something. But I don't think I have  
8 any great revelations about how to tackle that issue.

9                   MR. TOPOROFF: Okay. I really don't want to  
10 beat this to death because this is, again, just an  
11 introduction into the subject of a partnership. As I  
12 mentioned, the Federal Trade Commission has partners in a  
13 lot of different industries to tackle specific problems  
14 and it was not my intention or the Division's intention  
15 to iron out specific proposals today, but just to raise  
16 them.

17                   What I would suggest is that I'm going to get  
18 in touch with the other trade show promoters within the  
19 next -- I don't know, I can't give you a specific time  
20 frame -- but I will get back to Mark, John and -- your  
21 first name, again, I'm sorry?

22                   MR. LUDLUM: Mike.

23                   MR. TOPOROFF: Mike. About their respective  
24 shows and hopefully in some other point -- and again, I



1 don't have any specific time frame on this -- we can have  
2 a telephone conference call. I don't think that we need  
3 to bring everybody into Washington. And Dale. And  
4 possibly figure out steps that we can take again to form  
5 a partnership and at that time we could figure out do we  
6 want to work on consumer education efforts, do we want to  
7 increase some kind of monitoring or complaint referrals  
8 or as Dale was mentioning, notifying the states when  
9 shows are coming into town.

10 So, I think the three areas that we might want  
11 to focus on are again, from Dale's perspective, notifying  
12 the states; two, consumer education; and three, I'll call  
13 it law enforcement, if you will, but what I mean by that  
14 is referral of consumer complaints or other information  
15 that might assist us in better monitoring the conduct  
16 that goes on at a show.

17 So, I don't have anything else to say.

18 Carolyn, do you have any questions?

19 MS. COX: No.

20 MR. TOPOROFF: Myra?

21 MS. HOWARD: No.

22 MR. TOPOROFF: Any last thoughts?

23 MR. FORSETH: Thanks for the opportunity to  
24 participate.

1 MR. TIFFORD: I'll second that.

2 MR. TOPOROFF: Okay. Thank you very much. I  
3 appreciate everybody being here.

4 (Whereupon, at 12:19 p.m., the  
5 meeting was concluded.)

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C E R T I F I C A T I O N O F R E P O R T E R

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2 CASE TITLE: FRANCHISE RULE

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4

5 I HEREBY CERTIFY that the transcript contained  
6 herein is a full and accurate transcript of the notes  
7 taken by me at the hearing on the above cause before the  
8 FEDERAL TRADE COMMISSION to the best of my knowledge and  
9 belief.

10 DATED: AUGUST 11, 1997

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ELIZABETH M. STABLER

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15 C E R T I F I C A T I O N O F P R O O F R E A D E R

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17 I HEREBY CERTIFY that I proofread the transcript for  
18 accuracy in spelling, hyphenation, punctuation and  
19 format.

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