

>> ELLA KRAINSKY: All right everyone, welcome back. This is now our third panel on mobil-2(s) Âa\$L
the Interactive Advertising Bureau. And for those of you who may not know it, even though we're
an incredibly important and fantastic organization, we are a trade association, and we represent the
sellers or the sell side in advertising -- so, any company who is either serving or has inventory to
sell in the interactive space. So, that may be Websites. It could be on mobile phones, et cetera.
And again, I run the mobile part of it. So, what we're doing is we're trying to create a better
environment for mobile advertising either on mobile phones or tablets or across different kinds of

Website, that's going on the Web and don't necessarily understand sometimes that apps are going online, as well, and sort of the different expectations that may come into play there. I think also a challenge is getting advertisers on board with this. I think there's been a lot of disincentives -- except for the FTC sort of looming -- for these companies to really design well for consumers, to make the experience more transparent, and to give consumers control over their transactions. I think that's, from our perspective, some of the major challenges.

>> JIM HALPERT: I'm Jim Halpert. I'm a partner at DLA Piper, which is a global law firm. And I am General Counsel to the Internet Commerce Coalition, speaking on their behalf today. It's a trade group with members that include Amazon, AT&T, Comcast, Career Builder, eBay, Google, monster.com and Verizon. And the members of the organization see this question of mobile disclosures as very much a win-win issue for businesses and for consumers. It's very important to our members that consumers not be surprised about important terms, and it's very important that, in the space-limited format, which is the major challenge -- I agree completely with the way this problem has been framed by Anna and then by Michelle -- that there be ways, in a limited space, to attract the attention of consumers so that important clarifications as to what offers are and are not about are readily apparent to somebody who is on the go and who's looking at what's often a small screen. At the same time, mobile is many different things. It also includes a tablet computer, where it's pretty easy to expand out and see things. So, I think we need to be careful in our terminology as we talk about mobile to focus on the formats that really present the greatest challenge and speak empirically and practically about solutions that will work.

>> PATRICIA POSS: Mark?

>> MARK ODEGARD: Hi. I'm Mark Odegard. I'm the Senior Attorney at Best Buy's Legal Department for advertising and legal marketing matters. There's about three or four of us that are charged with responsibilities for the United States. The advertising runs the gamut from the traditional circulars that you get in your Sunday newspaper, all the way to SMS and mobile advertising. I won't rehash all the discussion about limited real estate, other than I will add that, as our offers get more and more complex, it's not just about sell selling widgets. We're going to sell subscription offers. We're going to sell services. We're going to bundle other types of offers

together. As our offers get more and more complicated, it becomes harder and harder to disclose the material terms of the offers and to become fully in compliance with the FTC's regulations and rules. Imagine trying to also disclose, on top of all of that, a financed offer, on top of all of that, let's say, a sweepstakes offer. It becomes harder and harder. Another challenge is that the rules require us to focus on the reasonable consumer. It becomes increasingly difficult to know who the reasonable consumer is these days. It might be my mother, who asked me to look up something on "the Google," as she calls it. It might be my nephews, you know, who can put everything together. They don't need all the services that we might have relied on selling. So, it's a tougher and tougher environment that we're in, and the challenges are getting greater and greater.

>> DAVID SCHELLHASE: Hi. I'm David Schellhase. I'm the General Counsel at Groupon. I have my one-year ann

provided and gathered about them.” You know, just understanding what consumers really know about the functionality.

>> SHERYL ANN YAMUDER: Hi. My name is Sheryl Ann Yamuder, and I am counsel for Dunkin' Brands. And I think probably the biggest challenge, which is partly what everyone's been saying, has to do with the various ways that ads are accessed through various devices. I think it's not a one-size-fits-all situation. So, to be able to provide ads in so many different formats, to meet so many different needs, never being sure exactly how the consumer is going to access the content becomes a real challenge for advertisers.

>> PATRICIA POSS: Great. All right, thank you. And that was a great setup for our first example here, which I'll put up. So, we're reusing one of our examples from the previous panel. So, you take a look there. Example one here is a fantastic cuisine Dutch oven Website selling the oven. If you look over in that far right-hand corner, you might see the disclosures over there that say you're going to be enrolled in a recipe club that's going to be charged -- I think it's \$4.95 a month. I can't quite read the disclosures from here. So, now let's take a look at this same Website from a mobile device. It just got shrunk. Well, then let's pinch and zoom in. And where did the disclosure go? I can add it to my cart, but the disclosure is gone. Let's look at one of the other examples that we had from this morning, where you see near the "add to cart" button -- the disclosure is right there. And now let's shrink that one. We shrink, and then we zoom in. And at least it's there. And one more example would be what I call a mobile-specific site. Let's say you've actually created a separate Website from your m-commerce site that, when a consumer is coming from a mobile device, the browser directs them to this. Okay, so, now I'd like to get -- And the panelists -- we've talked about this a little bit already, this issue, which is part of the screen-size issue. We have browsers that are helping us. But how are companies dealing with this? How are folks trying to handle this problem, if at all? Jim, do you want it talk about that?

Patty laid out, it is important to put inside of the box, close to the point where the user is going to click to accept the arrangement, the disclosure, because that's a material term. And there's significant potential class-action liability under state laws for failing to comply with the requirements in various areas of clear and conspicuous disclosures, but also proximate disclosures. So, in this context, to be safe, my legal advice would be to put that information about the enrollment and the ongoing payment arrangement very close to where the user is going to accept and not on the outside.

>> PATRICIA POSS: Mark, did you have anything you want to add?

>> MARK ODEGARD: No. I would echo what was just said. You know, obviously, I tend to prefer the one later in the packet, where it's nearby and close that we disclose the material terms of the offer. When I review these kinds of things and I counsel my clients, what I'm looking at is our history of, let's say, litigation. Have we had similar claims of that nature? I also look at the history of enforcement actions taken against our competitors or similarly situated companies. All of that, you know, goes into the formula for me to try to determine whether or not this is a risky endeavor to go ahead and do something like that. Some things become of greater concern to me. This kind of an offer, with the obligation on the part of consumers for regular, recurring payments does cause me greater concern. I have a heightened sensitivity to that.

>> PATRICIA POSS: David, did you have anything you want to add?

>> DAVID SCHELLHASE: Well, I'll violently agree with what Mark and Jim said. I mean, I think, you know, the key thing is to figure out what the key things are. And so, you know, when you're talking about some kind of an offer on a mobile device, you've got to decide what the salient features of that offer are -- price availability, refund availability, things like that. And they may change, right, depending upon what goods or services are being offered. But you've definitely got to be up front with everything, or you're going to mis-set a consumer expectation. And over the life of your brand, that's the worst thing you can do.

And I think when that's done, as sort of demonstrated in these hypotheticals, you know, the issue of looking at it on a mobile device versus looking at it on a computer becomes somewhat less of an issue because now, even on a smaller screen, you've got that material information right there,

enter the content with your phone or with a tablet or through your PC, it would feel that you're coming from that kind of device, and it would shuffle those boxes around so that they end up in a place where you can read, but where it also makes sense on the screen. That's kind of what it is, really. And it's very practical for that purpose because, in comparison to other types of creation of mobile Web, it works on any device. So, you only have to do it once for all of your different screens that you want to reach. What it also does that is different than the traditional HTML is that it considers mobile first. So, whatever kind of content you try to produce, you have the mobile device in mind, and then it will adjust to the other devices rather than the other way around, which makes it more practical from many perspectives. And especially, again, coming back to the point that I made before, in the beginning, when we talked about the challenge -- there are so many different screen sizes. A mobile phone is not just one 600x800. It can be anything. It's not really clear what is a tablet because there are mobile phones that you have to hold with two hands, and there are tablets that you can only hold with one. And depending on what kind of device you have, as a user, you will be in a different state of mind and a different mode, and you will be differently interested in the content that is upon it. So, responsive design is a very effective way of solving a problem across different platforms.

>> PATRICIA POSS: Great. Do you want to just mention -- I know you weren't going to talk about the cost, but are there ways around using responsive design or more inexpensive ways in which a company might be able to design their site?

>> ANNA BAGER: So, I don't think that it's more expensive to use responsive design, necessarily, than any other technology, depending on how you budget, of course, or how you define cost. But responsive design has been around for a long time. The reason everybody's so interested in it right now is that Steve Jobs mentioned it, I think, in 2009 or '10 in a speech, saying that responsive design was something that -- that's the future, when Flash is dying and other kinds of other kinds of technologies that have been existing before. And as with everything else, he said, people picked up on, it and that was kind of the claim to fame for the responsive design. So, it's not a new technology. It's commonly known. It's also in evolution. So there will be an HTML6 eventually. This is HTML5, for the most of it. So, I don't think that it's more expensive to produce in responsive design. It may also be more cost-effective because, again, you can have one Web

strategy for mobile as well as for display. And if you think about, again, the fact of what kind of content you're producing, it may be effective to do it across devices and not have a separate strategy for one device as opposed to another. From a user perspective, it will also make them feel at home. So, if they have access to your site on the Web and they access it on the mobile, they will recognize it. The problem with other types of Web designs -- above all, the pinch and pull. So, when you have a Website that is accessible from a mobile, but it's just your traditional Website and then you have to enlarge it and make it smaller -- is that you can -- while doing so, you can press hyperlinks. You can check boxes. You can be transported to other places, where you don't really want to be. It's not in total control. If you have children using it, you don't really know where they will end up. So, responsive design really is a good way of solving it. And I think from an economical perspective, it doesn't have to be more expensive than anything else.

>> PATRICIA POSS: Okay. And should all commercial Websites be designed to ensure that their disclosures are clear and conspicuous when they're viewed from a mobile device? Should we expect that everybody's Websites should be able to be viewed from a mobile device? Jim, you want to take that? Oh, Paul?

>> JIM HALPERT: Why don't you start from a regulator perspective?

>> PAUL SINGER: Yes. That's the answer. . ectw-14>pecTw 12.03 0 Yen2(a)m4-13(t)-6(ar5(pe)-cs-1.7s(a)4

I was going to say that, that was interesting to me that consumers stopped a transaction based on -- And again, I think that's a disincentive to provide adequate disclosure for businesses. So, I think that's something -- I'm not exactly sure how you'd solve that issue, but I think that's just another way that it's making it harder for advertisers to actually want to inform their customers.

>> JIM HALPERT: I'm not entirely sure that that follows. I think we have these data points that are pretty general, and if somebody does some price research or something while they're at the checkout, that may not mean that there's any greater incentive for disincentive. But it does mean that there's more information. We then have to go one step further and look on a case-by-case basis if there was misleading representation as to that offer. And given that most Websites aren't tailored specifically to a mobile audience, I'm not sure that all that really, at this point, comes into play. But that said, it's obviously very important that disclosures be adequate and that consumers be fully informed.

>> PATRICIA POSS: Mark, do you want to talk about what you're seeing, in terms of consumer mobile use?

>> MARK ODEGARD: Yeah. I wish I had some of the certainty that a lot of folks express about consumers and their wants and desires on how they're using equipment and devices to go ahead and shop to do research before they decide to buy something or participate in some kind of an offering. On the one hand, I'VE been in meetings and marketing meetings, and folks have told me about how the consumer today is so speedy quick to judge, Not deliberative. On the other hand, we've experienced firsthand that consumers today -- some of this is my personal opinion -- have never been so well-informed, in that they use their devices to both enhance the shopping experience in a bricks-and-mortar store, comparison-shop, price-match right in our stores. Things like that are happening. So, it's very difficult for me to generalize because I've seen the data go both ways. But I guess I'll just come back to the point that you've got to do the best you can, take the data that

might have held or been told a couple years ago regarding consumer behavior -- I think a lot of that's already becoming outmoded, and I'm seeing continual change in that area.

>> PATRICIA POSS: Anybody else want to add to that, the impact on being able to provide clear and conspicuous disclosure, based on the use of mobile? Okay. Well, let's move on to proximity. We heard a lot of discussion about proximity earlier today. And the current guidance says that

which also has limited sort of screen space and duration. And that's television advertising, right?

restaurants, even if they're franchisee restaurants, furious because they saw some ad and the restriction was incredibly narrow in terms of the places that consumers could go to take advantage of that. So it's really worth planning as you do these kinds of campaigns to figure out how you're going to inform consumers and they're not going to be disappointed and angry at your brand because they didn't see the restrictions on an offer. And being creative and thinking about the parameters we've been discussing is a good way to start to avoid that kind of trouble.

that, and one of the ways we've addressed it is with our truly mobile product, which is a now product which enables you to sort of click on a button, and if you enable geolocation, you get to see restaurant deals, for example, that are in walking distance. If you buy that restaurant deal, it's evanescent. In other words, it's good only for a certain period of time, and if you don't show up at the restaurant by that period of time, the deal is over. And so, when we first started thinking about that, we thought, you know, "How can we make this risk-free for the customer?" because the customer, if they show up at 4:01 and the deal is over at 4:00, they're gonna have a very bad experience. So we made a decision, and it's not for everybody, but it was right for us as we sort of roll this new product out, that if you don't get to the restaurant by 4:00, you get an automatic refund. So even though you bought it and you bought it through your credit card, your credit card will then be refunded instantly -- or not instantly, but within a day or so day if you don't go to the restaurant and take advantage of the deal. And that, I think, creates a lot of kind of chocolaty goodness around your brand and a good customer feeling. It's not necessarily -- And you can see it in our disclosures. It's right below the "buy" button on the "now" product and it says you're gonna get an automatic refund if you don't use the deal. And I think that's something very important for everybody. You really got to think about your brand and think about what customer perception you're creating. So it's not just about -- I mean, so much of our conversation's about the lowest common denominator, right? What's the minimum we can say to get a good disclosure that's gonna pass muster with the FTC, that's gonna not outrage plaintiffs' lawyers too much and so on and so forth or A.G.s. And we think that that's important, but it's also important not to just say what the lowest common denominator is, but to also think about sort of more aspirational things.

>> PATRICIA POSS: I promised Paul I'd give I (c)4(t)-2()-1(o 4(t)-2(or()-10d1(t)-2)30() 1(o i)-2(m(y)20(e)-6

consistent with certainly actions that regulators have taken when they're looking at how a hyperlink would need to be disclosed. But I think more to the point of this example and this offer, you know, back to what we've been talking about all along, the material limitations on your ability to get a \$15 for -- or 15 for \$30 worth of this Italian food should be displayed right there proximate to the offer and this isn't a space-limit issue. I mean, They can be. When you click on "more info," I mean, they are. It's on a nice screen that's right next to the "buy" button, and it's proximate right there. You don't have the pretty picture of the pasta anymore, but the disclosures can be made, and certainly, I know from my personal use of Groupon that there's some of these facts that get disclosed in different ways. I mean, the location, for example. The location limitation would probably be right here in the title of it. You know, I've certainly seen plenty of those come across on my phone. It'll say "Germantown location only" or something like that. And so my point of all this is I think there are ways even within this space constraint mechanism here to get that information across without necessarily having to use hyperlink.

>> PATRICIA POSS: Let's -- I do want to get a chance to talk about location-based ads to drive traffic just so we -- I talked about that also at the panel. But since it's very mobile and that seems to be one of the hot areas in mobile, let's talk about that. Let's say there's -- If a consumer receives a location-based ad for a discounted sandwich and what if when they get to the restaurant -- for a restaurant that's just a few blocks away. So they go to the restaurant, but when they get there, they find you have to buy two sandwiches to be able to get the discount. What do we think about that? What all should need to be in the banner ad itself or in the push notification or in the text -- whatever method in which that ad was displayed? What needs to be in there if there's some kind of restriction like that? Sheryl Ann, you want to talk about that?

>> SHERYL ANN YAMUDER: So, I think it is important to make it clear on the banner ad, even

find out that the offer isn't what they thought it was and they're unhappy, then clearly, they are not going to go back, and they are going to be dissatisfied, and nobody wants that.

>> PATRICIA POSS: Jim, you want to talk about that?

>> JIM HALPERT: I just agree completely that your brand is on the line when do you this kind of high-profile advertising. If you're on the mobile phone, people are very likely to see it, probably more likely to see if than if you have an ad on a Website where there's a lot more content and the viewer won't necessarily -- the Internet user won't necessarily focus. And your brand is on the line. Do this carefully. In the end, an ad that -- particularly some of those Geo Limited ads that people go out of their way to try to take advantage of a deal -- if the deal's a loser, it's the classic kind of annoying consumer experience. I agree completely.

>> PATRICIA POSS: Anybody else want to comment on that before I move on? Well, I just -- I agree fully. But, then, there is a little bit of a problem with, again, the banner ad and how much --

these different platforms -- is the complaint and grievance process. I think that's really unclear for consumers. You know, "who do I call if I feel deceived?" You know, the FTC is great, but that's just one resource. I think that's really something that is unfairly confusing for people. And certainly, when you have a mobile phone and then you add a cell carrier into that equation, you know, a lot of times, you hear people say, you know, they called AT&T to complain about this ad. And so they may not understand the liability in it. I've also heard of consumers being caught in between a merchant and say a Groupon -- Not specifically, but just so that they really don't know. So I think that's something that, you know, just on a basic level really needs to be resolved. And the FTC could probably offer some guidance on who and how that liability should flow. And then the other thing I would say, I think, when you talk about rich-content type stuff, I think there's two ways to look at it. One is that there's an opportunity for consumers to be better educated. Perhaps, if they're not going to read certain disclosures, there would be a way to provide them within the context of a game or video. The danger, I think, would be that those don't imply, again, financial ramifications a lot of times. You know, if you're in a game, it's about fun. You may not really understand, depending on how the disclosure is offered to you, again, the financial ramifications or that you are accepting sort of a financial ramification if you agree to something.

>> PATRICIA POSS: So, we have one question from the audience that I'll read here. "So, what about the use of disclosures on multiple cart pages after the "add to cart" button is checked? On the final page, where the payment -- where the payment info are populated. Must disclosures be repeated there?" Repetition is one of the items that's listed in our guidance documents, too. What does the panel think about this question? Anyone want to take a crack at it? Jim, you're starting to move. [Laughter]

>> JIM HALPERT: No, I'm prepared on this one. Again, all these are contextual. And if there's a very clear and prominent disclosure in the first page before the user clicks "I accept," it may not be mess to provide repetitious notice. On the other hand, if you have a term that is an extraordinary term and something that would create huge potential liability for a consumer, for example, it would be important to disclose that perhaps a second time, depending on the context. But the beauty of the Dot Com Disclosure document, guidance document, which they had enormous foresight in putting out in 2000. It's really stood the test of time, and it's quite striking when one considers, for

>> PAUL L. SINGER: So, I'll echo a little bit of what Jim was just saying. But I think that the basic principles and really the content, the core substance of the 2000 Dot Com guidelines is still very true. And I think that the basic principles that apply to future technology as well. And so, I mean, I think, in terms of getting into the space, you know, I think it's wrong to assume that just because it's a new technology or just because, you know, it's something new to you or new to users means that the principle should change, right? So, you know, the core concepts and the core fundamental consumer-protection values are still gonna be true, regardless of the platform, and I think that's important to remember.

functionalities we've been talking about. You have so many layers, so many options to go ahead, to get to the consumer, yet still in a compliant fashion with FTC regulations and associated laws to get there. So, truly a wonderful problem to have. It might keep us up late sometimes. But it's better than the alternative.

>> PATRICIA POSS: And Jim?

>> JIM HALPERT: I think I already concluded with my last answer.

>> PATRICIA POSS: Yeah. Pretty close. Okay. Michelle?

>> MICHELLE DE MOOY: What I would say my advice to a mobile start-up would be -- and I think people have mentioned this, but, you know, the context should be what prioritizes the disclosures. And I think the merchant should conform to the consumer expectation, not the other way around. I think that's a good business principle, a good consumer-protection principle. I think

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>> ANNA BAGER: Great. No, I mean, I can only end where I started in saying that responsive design is probably -- especially if you're a start-up and you have the luxury to start from scratch. Think mobile first. Think about the fact that a lot of people are accessing content via the mobile today, and more will do so in the future. Eventually, everything will be mobile at least from a networking perspective. Think about mobile first. Think about the fact that a lot of people are accessing content via the mobile today, and more will do so in the future. Eventually, everything will be mobile at least from a networking perspective.