THE BROOKINGS INSTITUTION
FALK AUDITORIUM

INTERNET POLICYMAKING: NEW GUIDING PRINCIPLES

Washington, D.C.
Monday, December 6, 2010

User Education and Net Citizenship: How Can the Government Encourage Adherence to Best Practice?

CHRISTINE VARNEY, Moderator
Assistant Attorney General, Antitrust Division
Department of Justice

PAMELA PASSMAN
Corporate Vice President and Deputy General Counsel
Microsoft

GARY EPSTEIN
General Counsel
Aspen International Digital Economic Accords Project

ALAN DAVIDSON
Director of Public Policy
Google Inc.

RAY RAMSEY
President and Chief Executive Officer
TechNet

* * * * *

P R O C E E D I N G S

MR. WEST: Okay, our next panel is going to deal with user education and net citizenship, how the government can encourage adherence to best practices. And we are very pleased to welcome Christine Varney here with us at Brookings. Christine will be moderating this panel. Christine, as you know, is the assistant attorney general for the Antitrust Division of the Department of Justice. Christine.

MS. VARNEY: Thank you so much, and it's a delight to be here and be back talking about a subject I used to know a lot about. Let me start by emphasizing, pointing out disclaiming any professional responsibility today. I'm here solely in a personal capacity. I am not here as a representative of the Department of Justice or the administration, so I'm just here as somebody who used to work on these issues and has followed them with keen interest.

Now, the people who you can hold accountable for what they say today include Alan Davidson, who is the head of U.S. Public Policy for Google. Prior to joining Google, Alan was the associate director for the Center for Democracy and Technology, and an adjunct professor at Georgetown University and a computer scientist.

Also joining us is Gary Epstein. He's the managing director and general counsel of the Aspen Institute International Digital Economy Accords Idea Project. Before joining the Idea Project, Gary was the founder and global chair of the Communications and Practice Group at Latham & Watkins. He has also served as a team leader of the Economics International Trade Team on President Obama's transition, executive vice president of SkyTerra Communications and the digital television coordinator and chief of the Common Carrier Bureau at the FCC.

Pamela Passman is here. She is Microsoft's vice president and deputy general counsel, Global Corporate and Regulatory Affairs. Prior to serving in that position from October 1996 till April of 2002, Pamela was the associate general counsel responsible for Microsoft's law and corporate affairs groups in Japan, South Korea, Taiwan, People's Republic of China, and Hong Kong. Prior to joining Microsoft, Pamela was at Covington & Burling.

Also with us is Rey Ramsey. He is the president and chief executive officer of TechNet, the bipartisan political network of chief executive officers and senior executives of

leading U.S. Technology Company. Rey was previously CEO of One Economy Corporation, president and chief operating officer of the Enterprise Foundation, an officer to the cabinets of two governors of Oregon as the state's director of Housing and Community Services, as well as practicing law.

So welcome to everybody. What we thought we would do at the panel is just start with some questions which we hope will provoke a conversation among ourselves, and then turn it open to questions from all of you. So what I want to start with, given the title of our panel is: Do voluntary best practices work? For example, in unchartered or rapidly changing areas such a privacy, net neutrality, can we and should we rely on best practices, or do we need legislation and regulation? And why don't all of you take a crack at that, and then we'll dive deep.

Go ahead, Alan.

MR. DAVIDSON: Now, I'm not being --

MS. VARNEY: Easy one to start.

MR. DAVIDSON: Here we go, a simple question. First of all, let me say thank you for the organizers for putting together such a great set of presentations today. It's really tremendous, and this is a set of issues we really do need to make progress on, so congratulations and thanks

I think a starting point might be sort of are there good examples out there, best practices or user education initiatives that have had traction? And I'll just speak a little, give a couple of the examples from Google's perspective. We've heard, for example, about GNI and BITAG, but even looking a little more granularly at some of the products that we've created, so Google owns YouTube. YouTube's a very popular video-sharing site. Every minute, 35 hours of video is uploaded on YouTube. That's our latest statistic, so, you know, since our introductions began, you know, almost, you know, several days' worth of video has been uploaded upon YouTube.

It's very, very difficult to imagine how, one, how a government or even a single, you know, entity could go out and prescreen all that content, try to police it, but what we have put in place instead of community standards that our community is very aware of and a set of flagging

mechanisms where they can flag content that's inappropriate. And what we've seen, and this was -- it was not known that this would work when we began, but what we've seen is actually this is a mechanism that can work very well, so, for example, we don't allow pornography on the YouTube. It's a violation of our community standards. It's not illegal, but it's a violation of our community standards. And actually we've gotten, I think, pretty good -- not perfect, but pretty good -- at catching it because what happens is when you have literally hundreds of millions of people watching videos and they know that the standards are in place, they will flag content that they know violates those standards. And then, very quickly, we can intervene and take content down.

I think there are a lot of examples of innovation in the space where the Internet itself allows users not just to be educated, but empowered. That's a good example. Another example is the work that we've been doing on Internet advertising where recently Google got involved in trying to do what we call intraspace advertising, targeting based on interest. And we were able to do something new which was to place on every ad that we put up a icon where people can find more information. We created an ads preference manager that lets people select their -- see what we know about them and try to tweak it themselves.

I'm not saying that these are perfect initiatives but I do think they are examples of how we can, if we educate users, we can empower them in some of these areas.

There will be areas where we do want and need the bully pulpit or the backstop of government, but anyway my point I think is that there's a tremendous amount of innovation, and we can do more on transparency and empowering people as a start.

MS. VARNEY: Well, Pamela, I mean, the bully pulpit of government can mean lots of things. It can mean people pounding the table and say you need to do this, it can mean legislation, it can mean regulation. What do "best practices" mean to you and when do they work and when don't they work? And when you want the government involved, in what way?

MS. PASSMAN: Great question. I mean, this morning's been all about, you know, when is regulation the right appropriate vehicle versus self-regulation, and I think the answer is yes, you know.

MR. DAVIDSON: Right.

MS. PASSMAN: There are appropriate times for both. You know, Microsoft has advocated for comprehensive privacy legislation since 2005, and for a variety of reasons, I mean, the speed of technological change is the debates that are happening of various levels of society, that hasn't happened yet. But, nonetheless, we have felt very strongly that we needed to put some stakes in the ground in terms of the way we developed our products, the way we conducted our business, and, over time, you know, those have become best industry practices, and we have very much felt a responsibility to provide that kind of information to the industry or the ecosystem, if you will.

An example is the Microsoft security development life cycle, which is a mandatory way that all of our product development, all of our architectural or engineers develop our products to improve the security of software code. It's been very successful for us, and we have made this information broadly available to software developers around the world.

Another example is our commitment to privacy by design, something that the FCC is very much focused on as well as the European Commission. Here again, we are committed to designing, developing our products with privacy front and center, and all the processes that happen around that as a company need to take that into account.

We just released Kinect Xbox 360 which takes -- this is fabulous, it's my first gaming experience, actually -- it takes facial and body pictures as you are doing thee fabulous different kinds of games. And we recognized early on in the development of that product that we needed to design privacy from the ground up. We are sharing all this privacy by design know-how with others in the industry.

Again, two examples of best practices -- I think we've heard a number this morning -- the Global Network Initiative, as Alan also mentioned and Leslie very articulately laid out for us; you know, the work that Arnie does is just phenomenal creating best practices that are shared around the world and creating incentives for companies to work together, to develop technological solutions in the hopes of advancing the response to very, very challenging situation.

MS. VARNEY: Well, Gary, that's, you know, from the American perspective all

very interesting because when you look particularly at jurisdictions like Europe, I don't see a lot of best practices; I see a lot of regulation legislation. So government is clearly taking a different role in other parts of the world.

How do you see that? How do the roles that government can take both in the U.S. and internationally, and how can government be effective without sort of the heavy hand that we all, you know, fear could retard innovation, but yet maybe put the safeguards in place that some feel are lacking?

MR. EPSTEIN: Thank you, Christine, another easy question. I get --

MS. VARNEY: I'm known for this.

MR. EPSTEIN: I did want to note, as you listed my title, I somehow feel that the length of the title is inversely proportional to the staff and the power that I've had over the years in my various jobs.

I can answer that question by maybe describing just for a second this project which I'm involved in now which is the Aspen Institute Idea Project. And what this is, is I learned an awful lot today from these really excellent speakers both on multi-stakeholder, governance, and on the aspect of setting principles. What we're trying to do is we have 19 -- and I think I'm going to coin a new term, "a high-road elephant" in the consortium right now -- 19 of the major companies. And we have important NGOs, including Leslie Harris' organization, and that is an important part of the venture that we're trying to go forward.

And what we're trying to do right now is develop these principles that you're talking about, Christine, in order to see whether from a U.S. perspective we can reach some kind of accommodation or some sort of consensus. And we have the full support of the U.S. Government who has been extremely helpful. Both members of this panel have are also -- have been extremely helpful in getting us to the point where we are now.

And so we recognize that in order to have the appropriate nonregulatory role that you're talking about, we probably have to achieve consensus here in the U.S. first, but we can't be U.S.-centric. And so the idea is to take these concepts and these principles, see if over the next six months to a year we can actually develop them in the open Internet area and then see if

we can reach consensus overseas.

I will listen with great interest to Ambassador Kornbluh's advice and speak and direction on how to make this perhaps an easier sell in Europe than we think it may be.

MS. VARNEY: Interesting. Well, in all of this, right, what's the responsibility of the NetiZon? How do we, as citizens, get our government to do what we think they need to do or -- it sounds like the companies are being pretty responsive, what's the role of the NetiZons?

MR. EPSTEIN: Other than prayer? Let me -- I want to take a slight take on that question because I think it's important to sort of look at this as an ecosystem and that includes government, the public interest groups, the nonprofits, the companies. And then when you get to the citizen, the challenge that I think we still have is how do we create a process and a means for citizens to actually participate? And so before you can answer the question of the responsibility of the NetiZon, the question is how do we ensure that people have both the capacity and the means to be able to participate in the ecosystem?

So some can and do and many others don't. I mean, you do have some net tools out there, you know, the way Alan was describing that Google makes available the people where the citizen herself can actually just engage and be involved and take advantage of things. But in some cases we have so much more to do in terms of making it possible for people to participate, so I think it's a difficult question. When you say "responsibility," well, yeah, there is some responsibility to yourself to your family, but a lot of people don't have the ability to participate.

I mean, look at broadband and how we spend money, how we try to get people involved in broadband. The big issue is still adoption. We still have a huge percentage of the population that even when they're exposed to broadband don't adopt broadband. So they're not even in the system; they're not even in the ecosystem.

So I think we've got some of those things to look at before we can say that they have responsibilities.

MS. VARNEY: Well, let's drill down a little and it looks like two areas that are very topical and talk about best practices, privacy best practices, net neutrality. Is that enough or

do we need something more? You know, the FCC has articulated principles for net neutrality for quite a long time now, and the Federal Trade Commission and others have articulated principles for privacy on the Internet for quite a long time now.

And what's wrong? Why are we having this conversation if best practices work? Alan?

MR. DAVIDSON: I think I'd start by saying that the pace of change is incredible, and I think we have to recognize that that's part of the difficult here, and it's part of the challenge that Rey talks about, right? I mean, you know, it's very if -- you know, we recognize it's bewildering out there. So, you know, I don't -- I think a lot of people have said it's not -- it's not an either/or, it's exactly what Pamela was saying: We have actually joined this great initiative that Microsoft I think was one of the pioneers of saying that there ought to be baseline privacy protections because even if you have wonderful actors out there like Google and Microsoft, you will still need probably some baseline protections to deal with others who may not be consumer facing and who may have different businesses that actually lead them in directions that we think are not appropriate.

So it's not to say it's an either/or; it really is an event. But I think the tricky part of this is, as I say, the pace of change and why I think we are continuing to have this conversation that, Christine, before the panel that you were saying we've actually been having for quite awhile --

MS. VARNEY: That does need released.

MR. DAVIDSON: -- that you've been part of for quite awhile, and it's, you know, if we were having this conversation 12 years ago, Google wouldn't exist.

MS. VARNEY: Undoubtedly.

MR. DAVIDSON: You know, six years ago Mark Zuckerberg was in college and most people didn't know what Twitter was or that Twitter even existed. YouTube didn't exist, you know, so I think, you know, we have to -- with the mobile revolution, Internet, you know, Internet through mobility, then really within a reality. So if you look at the pace of change, I think we are going to continue to have this conversation because it is a struggle, and I think that fear in some

ways, and I think is that we have to be very careful about when we bring government in, in the regulatory capacity. It's not that it shouldn't be there, we know we need it in some places; it's just a question of how do we do it carefully.

MS. VARNEY: Well, and, Pamela, that's the reason that in the '90s we didn't regulate privacy on the Internet because things were moving so fast and we didn't want to retard innovation and we wanted to be careful. So the idea was, okay, let's articulate best practices and see where things evolve and have a light hand.

And some would say, well, you know, time's up. It's now time to move beyond that.

MS. PASSMAN: Well, I think the process that the Federal Trade Commission, and you could say the same of the FCC that have used in the past year and a half, two years to bring the various stakeholders together, and then they, you know, both agencies took broad views of stakeholders. So I mean I commend both processes. I think they have been very strong processes to bring in different groups.

And now industry, you know, needs to respond, and needs to be very thoughtful in how they respond. You know, the threat of regulation is quite powerful.

MS. VARNEY: Mm-hmm.

MS. PASSMAN: It is still an incredibly dynamic industry, you know. The EU data protection directive is under review, and, you know, lots of activity right now. But a new directive would not be in place for five years.

MS. VARNEY: Mm-hmm.

MS. PASSMAN: So today we're discussing how to amend change the EU data directive, and, you know, who knows what the environment's going to be like in five years?

So I think -- again, I commend the process here and, you know, the next 6 to 12 months are going to be very interesting.

MS. VARNEY: Gary, how about on net neutrality? Same deal? Go slow. Things are evolving, we don't know what's going to happen, let industry lead? Or is it time to put some regulations in place?

MR. EPSTEIN: Actually, I think it's a fascinating contrast. I won't tell you where I was 12 years ago or 18 years ago; probably in the same place I was now. But the net neutrality debate really is subject to the same issue of rapid technology change making old style regulation obsolete. But it's not because the issues are so new: The issues have been around for 20 or 30 or more years, you know. Net neutrality in some sense is a descendent of the computer 2 and computer 2 and computer 3 inquiries of the FCC, and those were, as panels earlier today have talked about in a fascinating series of discussions, is the old command and control notice of proposed rulemaking, comment, and you should have seen the rules that came out of computer 2 and computer 3. Many of you did.

I was the computer chief who has to implement computer 2 at the FCC, and that was a full-time job for the entire agency and in the end turned out not to be a particularly productive job because even then the pace of change was overshadowing what was happening.

And so the discussions we had earlier today I think were extremely instructive and I commend Danny Weitzner's speech, testimony on the Hill the other day, where he laid out the construct of the three kinds of regulation that governments could be involved in,

One of them was the old commands and control type regulation which I think by consensus today it has its values, and I wonder whether the FTC will adopt that in its most recent proceeding. But it doesn't really seem to work well anymore. And the other two is the government is a convener construct and then we wound up having major discussions about a multi-stakeholder process coming as a result of that, and then the general policies with after-the-fact regulation, and that's a long way of saying I think that's where we're going with the net neutrality type regulation. Like technology involves; regulatory policy should evolve also and we know that the detailed rules of the computer inquiries in all likelihood are just not going to work in this new environment.

This seems a very interesting and creative and really worth trying compromise for government involvement in rapidly changing technology.

MS. VARNEY: How are you, Rey? You've got a view on that, and then we'll got to you, Alan?

MR. RAMSEY: Yeah, let me say this about net neutrality. You know, if, when Julius Genackowski, the chairman of the FCC, laid out three basic ways that he wanted to operate the FCC, and I would say this: That if that is adhered to, we will handle this situation really well. He said we want to be transparent, we want to be open, and we want to be data-driven. And if those -- those are three very significant values, and if we adhere to those values, we'll have good policy.

And, as I've said to him personally, one of the most important things is, in policymaking, is a level of humility. If we're humble, we'll recognize that change is rapid, that we can't resolve and solve every issue. And what we need to do is have a framework and that framework needs to be elastic and evolve over a period of time while we remain transparent, while we're open. And in terms of openness and transparency, it's not only waiting for the sophisticated to come to you but it's also taking it on the road to seek other ideas, to seek other issues and other points of view.

So if we had that balance with the humility, I think we'll get there. I think this framework that was articulated last Wednesday is a good start. We'll see how it evolves over the next couple of weeks, but I think it's a good start.

MS. VARNEY: Alan, do you want to come in on that?

MR. DAVIDSON: Actually, I was -- actually, I wanted to say something a little bit broader than --

MS. VARNEY: Okay.

MR. DAVIDSON: -- about net neutrality. I'm happy to talk about that, too. And I think Google's made no secret of its belief that there are parts of the network infrastructure that need to have government involvement, and we expect in the spectrum space, and we saw it in the narrow band world. And we expect in some ways that there ought to be some baseline rules, and there's been good progress in that area.

But I think, what I was going to say sort of to our broader discussion, that, you know, we're sort of treating the involvement of government as kind of a binary thing, right?

MS. VARNEY: Mm-hmm.

MR. RAMSEY: You know, that it's sort of either -- this is what exactly Pamela was saying, you know, regulate or not regulate, yes, right, you know. I mean, you're going to need -- but if it's really a continuum -- and there are a lot of things that we've seen that government can do. Government has a role as a convener, the bully pulpit of government. I think what you've seen, something in the last panel was saying, you know, some of the -- a lot of progress has happened at the end of the barrel of a gun maybe, but also I think that also there has been a bully pulpit that the Federal Trade Commission has used very well here in the U.S. to convene these -- and other parts of the U.S. Government. The Department of Commerce is doing this now with the series of inquiries, to convene people in workshops, to get people talking about these issues.

It's happening internationally. Like the Internet Governance War on this property is a very good example of places where we can pull people together in multi-stakeholder groups and get them to talk about this. Government has a role itself as a modeler of those practices, right? Security standards, IPv6 adoption, we can look at lots of places where we need government and where government can use its purchasing power and model these best practices itself.

Government is a regulator of last resort in some cases, or maybe in some cases it will need to be the decider of some issues where it's about government behavior. So we need government engagement on issues like how we're going to deal with censorship and free expression online. How are we going to deal with surveillance rules? These are inherently government functions, and we need government out there protecting the model of a free and open Internet as well. So there is a continuum engagement.

MS. VARNEY: Pamela, do you want to come in on that?

MS. PASSMAN: We also need government reaching out to its counterparts around the world. I mean, the issue of harmonization of these rules, it's great to have the U.S. ambassador to the OECD there to close the session. It is absolutely critical, you know, as we see more and more of our services going to the cloud, and I know many others in our industry are very focused on the cross-border transfer of data and the fact that, you know, many -- multiple

governments are trying to regulate the same data. So we need, certainly, the U.S. Government to be a leader in interacting with its counterparts.

And I don't know that we can wait five years or ten years. You know, the technology and the interest of small, medium, large enterprises' governments moving to the cloud. They're getting ahead, if you will. And so we really need to get the whole legal framework in place for that.

MS. VARNEY: So let me speculate that there is probably complete agreement on this panel that government can and should be a convener. They should model their own best practices. They should enforce existing law fairly and reasonably. They should make sure the international playing field is level.

Now let me ask the audience, is that it? Does everybody agree that government should stop there and not go the next step? And it's a binary question, it's a yes or no question. Should government now in these areas that we've identified -- for example, start with privacy -- should government legislate privacy in the U.S. in the way -- let's pick an example, for the example the way the FTC has proposed -- do you all think that's a good thing? If you agree with that, raise your hand. Okay, not many.

Okay, how about network neutrality? Hands off? Leave it alone, let the companies continue to deliver and build out broadband and do what they need to do? Or do you agree it is time for the government to step in and legislate in order to protect the openness of the Internet? Raise your hand high so we can see it. Okay.

SPEAKER: (inaudible)

MS. VARNEY: Well, that's not binary. It's hard to -- so I'm taking off everything short of legislation and seeing where people stand.

Well, you're hearing a lot about what we're thinking. What are your questions? Do you have some questions for us? Yes, David? And please identify yourself when you stand up.

MR. JOHNSON: David Johnson, (inaudible). Earlier (inaudible) and we also have heard about steps that those elephants ca take to use their technical power to simply take

off from that sites that infringe widely-shared norms or, in some cases, not so, you know, some controversial electrical property norms.

What I'm not hearing is anything about whether the relationship between the elephants and their constituents can change institutionally. Should we be talking about new ways to give users the opportunity to have a voice in what the large technical companies actually adopt by way of policy? Or is it just a matter of whatever their terms of service said?

MS. VARNEY: And how would you give them a voice, David, before you pass off the --

MR. JOHNSON: Well, I think there are a few examples of ways to pose questions and get a sense for the online community. It's never going to be a representative democracy, and it's going to be a small number of users participating. But that's an area where we haven't done much innovating, so since this is about net citizens, I'd like to ask if we can innovate in that range.

MS. VARNEY: Okay, Rey, do you want to kick it off? Then we can ask the elephants.

SPEAKER: We always think of ourselves more as puppy dogs, actually, maybe a Labrador, but.

SPEAKER: Please, high-end (inaudible).

MS. VARNEY: Okay, go ahead.

MR. RAMSEY: Basically, what you were bringing up, David, was exactly what I was alluding to, sort of looking for some of these models. And there are some small things, you know, that are out there in terms of, you know, listening to consumers, listening, you know, to customers. And so I think this is room for a lot of innovation, and it's something that at TechNet we're very interested in from a policy perspective. And what we're looking at doing is setting up an apparatus so we can hear from a wider array of individuals.

I've been saying that if you had to bring together 5,000 really smart thinkers, you know, onto a subject matter, we're still doing it in a 20th century way and making phone calls and convening people. So it's something that we're working on, and you'll see something in the

coming year on that where we want to open up more of Washington in terms of the debate on issues like net neutrality and other issues.

But I've been living that for the past 10 months that I've been in this job sort of seeing that it goes slow and we need to open that up now. The companies, I'm sure, have got some other things they're looking at, but I'm looking at broader policy issues.

MS. VARNEY: Well, it's interesting when I throw it over to the companies because suppose you get 5,000 incredibly sophisticated NetiZons who say, you know what, Google, Microsoft? Absolutely you should not under any circumstances ever track any individuals. I think you got obligations to your shareholders, and these 5,000 people might not be your shareholders.

So how do you reconcile the competing interests of multiple stakeholders, including your shareholders, including the NetiZons, including consumers?

SPEAKER: Great question. Great question.

MS. VARNEY: No, you got -- and maybe Gary wants to take it first.

MS. PASSMAN: It's a great question, and companies have to be more transparent. I mean, just in the environment that we live in and, you know, every day you -- it comes closer to home. You just have to be more transparent, you have to be in a dialogue, and we are in a dialogue. I mean, consumers, our users are telling us exactly what they think. The challengers are a very diverse group of use. They're, you know, the recognition of the roll that your advertising does play on the Internet, you know, content is free, but, you know, there it is for a reason.

So I think, you know, our view is we must give consumers choice so that they can make an informed choice so there's a huge amount of education that goes into that, but we have to understand that users have very different perspectives, the technology has to provide choice, and there has to be significant dialogue with our users.

MS. VARNEY: Well, maybe we should put a question up to the 5,000 NetiZon panel to say would you like to continue to receive all your content for free or would you like to not get tracked and have to pay for all your content? A binary question.

MR. DAVIDSON: So I would say -- first of all, I would, like, in a lawyerly way reject the premise of the question. No, I'm not sure that we believe that there is this strong tension between these interests. I think a lot of us --

MS. VARNEY: It was a hypothetical, Alan.

MR. DAVIDSON: Oh, then I'm doubly rejecting it. I don't answer hypotheticals in Washington. But that we -- you know, I think we've all taken this kind of long view that actually, a lot of us in the interest of taking this long view, that actually doing what's right for the user community and the Internet communities ultimately are going to be what's good for our businesses.

We've actually had this experience on this very issue. We started this thing. I mentioned this thing called the "Ads Preference Manager," that Google launched which lets people actually go and see, think like on if you see an ad like Google, click on it, or you can search for "Ads Preference Manager" on a Google privacy, and it'll take you this page. But if you're logged in as a -- it'll take your cookie, and it will show you what we associate with that cookie, what interests, right, and will let you change those.

First of all, you can opt out of it so that we won't -- this cookie won't be operational, or you can change your preferences so it'll show you we think you're a car enthusiast and you like knitting. You can change those things, right.

So say I actually don't like knitting, but I really do like interior design. So what we have found when people go and visit this, we thought people were just going to go all opt out, right? I mean, that's what the advocates said. That's what we actually thought. And what we have found is that the vast majority of people when they come and visit this, I don't know if they're fascinated, but they end up tweaking. They don't opt out. What they do is they change their preferences. That's a win-win.

Now we had, you know, people are getting ads that they would like to see. It makes our system more effective, so I'm not sure that we have the right model here, that this is a -- that there is this tension. But I think what's more important is that there is this possibility, right. The reason we think user education is so important is because we actually think there's a

possibility to give users more control.

So David Johnson asked this very question. He wrote the great article with David Post years ago, late '90s, about Internet governance, right, and the possibility that you could create different rule spaces. If you gave people information, they could make choices, and if you gave them the possibility of choosing between different places where they could exist, they would vote with their feet.

I think we need to keep trying to do that. That is the thing, it's not just the old version of government regulation or nothing; it's like can we create new stuff. We're going to have regulation where we need it, but we also try and create these new things, the BITAGs, the IEPFs, the IGFs of the world, the global convening so that we can try and take the advantage of what the Internet offers us. It's all to Deke Allen, but thank you, David.

MS. VARNEY: I think there are a couple more questions. Go ahead, sir. Get your microphone and tell us who you are. The microphone's coming. Thank you.

MR. KERN: Charlie Kern. I spent 30 years on Capitol Hill with the Senate Judiciary Committee and the House Judiciary Committee with Senator Hart and many others.

I used to write speeches when I was up there -- I'm now retired -- in which I said when the tide of regulation goes down the beach, the sand of anti-enforcement must appear. And I'm wondering whether there's any role for antitrust enforcement in trying to shape some of these policy choices

MS. VARNEY: Well, thank you for that question. I'll -- (Laughter) -- we've got a lot of staff people here. Anybody want to answer that? You know, I'm going to confine myself today to let the current experts speak on this. We're trying very hard at the Antitrust Division to fulfill our mission vigorously, and we'll continue to do so.

But let me talk to the experts about their panel. I'm not sure that -- I think that what we're talking about today for self-regulation and user education probably is not an antitrust issue. You know, we're charged with protecting the nation's markets from undue concentration and illegal otherwise agreements that could tend to restrain trade. So I don't see that as a role that I'm currently in.

Go ahead.

MR. BALKAM: Stephen Balkam with the Family Online Safety Institute. In an earlier panel, Phil Weiser threw out the issue of cyberbully, for instance --

MS. VARNEY: Right.

MR. BALKAM: -- as a curious or difficult case to have to handle. It's not as straightforward as what Ernie Allen has to deal with at NICMIC, for instance.

The *New York Times* ran a very long article yesterday on its front cover trying to work it out. Isn't this a perfect example of where we need education, digital citizenship learning, or do we need what we're seeing is the states, not federal government but the states now crafting laws to deal with sensational, particularly suicides coming out of cyberbullying.

MS. VARNEY: Right. Where is that?

MR. BALKAM: We're not even talking about an international issue here, we're talking about state-by-state coming up with their own mosaic.

MS. VARNEY: Right.

MR. BALKAM: So how are we going to deal with cyberbullying in all of this?

MS. VARNEY: Who wants to take that? Go ahead, Rey.

MR. RAMSEY: One aspect of this, and not addressing the state law part of it, is the human behavioral side of it and sort of the training and the digital literacy and the support that a lot of people need.

One of the programs that I've been involved with, Comcast is actually a large funder of it, it's called Digital Connectors. And it's a training program for young people, and this is one of the areas where they're getting training in, so -- and they get lots of hours of training and they do community service going out training others. They're working in schools. So as we have a regulatory and legal framework that will likely grow because of the sensationalism of this, we've got to put as much energy on the behavioral norms and other things, and the training and to show young people, hey, it's not cool to do that and those sorts of things.

And I think we underinvest in some of those things, you know, sometimes, but that's part of what I'm saying, the means and capacity to participate. There are a lot of people

who say, like, oh, everybody does that. I thought everybody does that. Well, they don't. And so I think we need all of that.

MS. VARNEY: But, Gary, is that an area that we should be looking at legislation? I mean they've keyed up a pretty defined area, cyberbullying, terrible consequences. Should it be regulated, and should it be regulated at the state and local or federal level? And then I'll go to you, Pamela.

MR. EPSTEIN: Well, I, you know, I don't have first-hand experience like Microsoft and Google do in this, but I do think that before I would jump to 50 different state laws or political issues that were involved here I really do think that a heavy grounding in education and in bringing the issue to light and in publicity, and in those kinds of non-legislative solutions, we should attempt to put it on the table first.

You know, other -- I think here rushing to legislation may be problem as heinous and as difficult as the problem is.

MS. VARNEY: Pamela?

MS. PASSMAN: There are some very interesting conversation in your organization is quite engaged in really talking to school authorities and the school systems. I mean that they are very overburdened as it is today, but we have a history of health education, drug abuse education that happens at different points in time in the educational curriculum. And to the extent that we can begin to integrate some of these issues into the curriculum, getting more of the Parent-Teacher Associations involved, this has got to be a very grassroots, if you will, approach.

MS. VARNEY: Go ahead, Alan.

MR. DAVIDSON: Again, I think it's also an area where, you know, the pace of change is also incredible. And that's, of course, part of what is so difficult and I'd say, as a parent if a nine-year-old who has not yet discovered social networking but I'm told she may any moment, that it is, it's going to be a difficult environment. But again, if we were trying to put a law in place about this, if we'd done it a couple of years ago, we would have missed social networking, you know.

It's not even obvious that those are the areas. I shouldn't pick on that because if your conference was great presentations about what's happening, it's about global, it's about texting, and so it's not obvious that this lends itself to an immediate legislative solution. I think it's exactly what the other panelists have said: We've got a giant challenge in terms of getting a generation of much more media-literate, and getting their parents much more up to speed on the tools out there. So it's a hard one.

MS. VARNEY: Yes, go ahead.

MR. HOWARD: Alex Howard, O'Reilly Media. One of the themes that's come out of this morning is transparency and multi-stakeholders, and certainly the Justice Department itself is a stakeholder in this in the sense that we know that you're working with elephants here and elsewhere to get information about the same citizens online and to follow us as well as part of our prosecutions, or certainly a great interest in other parts of the government are as well, well beyond Justice.

So with respect to the premise of this how can government encourage adherence to best practices, how will the Justice Department be more transparent about the request it's making regarding mobile technology and regarding tracking on social networks and other ways that citizens exist online?

MS. VARNEY: Well, as I said when I started, I'm not here on behalf of the Department of Justice today. I'm here in a personal capacity, but I am the assistant attorney general for Antitrust, and I can tell you in the Antitrust Division we try to be completely transparent so that everything we undertake goes up on our website as it happens, and you get access to all of our filings.

We are very open on any of our matters to meet with interested parties, to talk to parties about what we're thinking about, but that's not the point of your question, and you're not going to get me today because I'm not here on that.

MR. DAVIDSON: Maybe I can help.

MS. VARNEY: So Alan can answer.

MR. DAVIDSON: I'll jump in for a second and just say that I think -- well, first of

all, yes, and, by the way, the Trust has an excellent privacy policy, and I totally recommend it to you if you're looking for a good model. And but -- and very transparent -- but I think in this area we need more transparency for sure.

I'll just say something that we've recently tried to do, do the launch of this tool called our *Government Transparency Report*. You can go find it on your favorite search engine. I'm sure it comes up even on Bing if you search for Google in government transparency, and it -- but what we did is we've tried to, in aggregate, post all of the number of requests for information about our users from each country. It's very revealing. And if you -- and we've also posted the aggregate number of requests to remove information from our services that we've gotten from each country.

And I think if we can get more people to put that kind of information up, it would be very helpful because I think it gives you a good indicator of what's going on out there and what's happening relatively among countries. I think this is an area where we need our government to help, which is to be more transparent itself but also encourage others to show what's really going on out there.

And so I have to say these requests shouldn't happen. A lot of them are about real law enforcement investigations or real illegal content that needs to be dealt with, but there needs to be a conversation and -- this is an area where it honestly needs to be a conversation between governments, companies, as much as we love the GNI and those kind of multi-stakeholder things, we can't do this. This is really about governments talking to each other.

MS. VARNEY: We have time for one last question, and this gentleman's been patiently waiting back here.

MR. MIA: Josh Mia, Romulus Group. So my question is about I guess how best standards, best practices really works when you're dealing with sort of irrevocable choices and irrevocable errors that happen on the Net. So best practices is something to me that evolves every time and says, okay, so these are things that we should try to adhere to, principally. But before that happens there are certain choices.

For example, a few months ago when Facebook CEO Mark Zuckerberg actually

states that the future of the net is that people don't really want privacy that much. And then you have all these issues where people's information is just out there. You can't really take that back, but you can get past and try and get, you know, better practices. And at the same time, you also have younger people who would make choices on the Internet, maybe they would put their own information up there, and you can maybe tell them some of the precautions and what not, but it would seem that the role for government, historically, would say that we protect you again long-term bad decisions. So we have social security because we presume you may not safe properly.

MS. VARNEY: For the moment.

MR. MIA: Stuff like that. And so I guess my question is for anybody on the panel, and especially I guess for Google and Microsoft, like --

SPEAKER: I have the Kinect.

MR. MIA: I do. It's very ridiculous in the pictures, and I don't know what the privacy policy is but nothing against the Kinect, but it's that kind of thing where they are just things that happen, and people either they can't know or just don't know and they'll make decisions. Maybe you could fix them, but it's out there.

So is there a role for law there? Thanks.

MS. VARNEY: One of you who goes on Microsoft? Pam?

MS. PASSMAN: I mean, that's why I talked about privacy by design. I mean, you need to build these concepts into the development of the product. Yes, bad things happen. People are imperfect and technology is imperfect, but, you know, how you build a product, the processes that you put around it, the compliance as a company that you invest into and ensure that you are meeting your commitments, all of these things, you know, are important, incredibly valuable.

But at the end of the day, you know, bad things do happen, and your ability to mitigate them, to respond to them, to be transparent about them are all very critical.

MS. VARNEY: Alan?

MR. DAVIDSON: Yes, I agree. We are not going to stop people from doing dumb things on the Internet, I'm afraid. And, you know, somewhere out there (inaudible) citizens

talk that, you know, somewhere out there right now is an 18-year-old who 30 years from now will be President of the United States. And that person is probably out there right now posting silly pictures, sending silly text messages, putting things up on a blog or a Facebook page that might be embarrassing or we might view as embarrassing. And I think we are in the -- we have to recognize this is a moving target, right. The hope is, of course, that 30 years from now that we'll view this as very differently, right. But we all posted something dumb in our, you know, Facebook page back in the 2010, right?

So, and, you know, our notions of privacy and other things, our other norms will change. But -- and it's going to be very hard to figure out how, so it's very hard for us to figure out how to stop people from doing those things, especially in this moving-target environment. What we can do is exactly what we were just talking about which is to try to give people as much information as possible, give them the tools to control things as much as we can, take advantage of the power that the Internet offers to give that control, try and keep the Internet this open place that allows that.

It's a huge challenge. It's a huge user education challenge, but otherwise we won't be able to stop the tide of people doing things, silly things on line.

MS. VARNEY: Well, in that spirit of the title of our panel, user education how can the government help, I'm from the government. I'm here to help, and I'll give you a parting piece of advice.

During this holiday season when I was driving home from work the other day, I got a text from my brother who has a seven-year-old and a nine-year-old, and it was the end of the day. It was for me 7:30, 8:00 at night, and the text from my brother said, hey, what did you get the kids for Christmas? And I assumed he was out Christmas shopping and didn't want to get the same thing.

I immediately pulled over because I would never text and drive, and I texted him a very long list because I love my niece and nephew -- the ambassador knows them, the one you had dinner with. I immediately texted back a long list of these wonderful things that I had gotten for my niece and nephew.

The text was from my niece on her father's phone.

Be careful as you approach the holiday season if you are a gift-giver. Be very careful.

Thank you, all. (Applause)