

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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AMERICAN CIVIL LIBERTIES : CIVIL ACTION NO. 98-5591  
UNION, et al :  
 :  
v. : Philadelphia, Pennsylvania  
 : November 6, 2006  
ALBERTO R. GONZALES, : 9:33 o'clock a.m.  
IN HIS OFFICIAL CAPACITY :  
AS ATTORNEY GENERAL OF :  
THE UNITED STATES :  
. . . . .

NON-JURY TRIAL (DAY 8)  
BEFORE THE HONORABLE LOWELL A. REED, JR.  
UNITED STATES DISTRICT COURT SENIOR JUDGE

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(Proceedings recorded by For The Record Gold digital sound recording; transcript provided by AAERT-certified transcribers.)

1                   (The following occurred in open court at 9:33  
2 o'clock a.m.)

3                   THE CLERK: All rise.

4                   THE COURT: Look at all these smiling faces, good  
5 morning.

6                   ALL: Good morning, your Honor.

7                   THE COURT: You're welcome to be seated. Are our  
8 protagonists ready to finish the deposition?

9                   MR. HANSON: We are, your Honor, although we have a  
10 new team in for you this morning to do some questioning and  
11 reading.

12                  THE COURT: We'll see whether they pass muster.

13                  MR. KWAWEGEN: The pressure is too much, your Honor.  
14 My colleague Katherine Marshall will be reading the answers,  
15 I'll be reading the questions.

16                  THE COURT: Good morning, Ms. Marshall.

17                  MS. MARSHALL: Good morning.

18                  THE COURT: Would you, for the record, restate the  
19 deponent's name and the date of the deposition, please?

20                  MR. KWAWEGEN: It is Alistair Allan, CEO of  
21 RuleSpace and the deposition was taken on February 28, 2006.  
22 We started reading this deposition last Thursday. And we're  
23 going to finish it today, hopefully.

24                  THE COURT: We were, as I seem to remember,  
25 somewhere in the neighborhood of page 161.



1 MR. KWAWEGEN: That's correct, your Honor.

2 THE COURT: Have we finished 161 yet?

3 MR. KWAWEGEN: Not yet.

4 THE COURT: And the objection to page 161 was  
5 withdrawn, is that correct?

6 MS. ULRICH: That's correct, your Honor.

7 THE COURT: Good morning, Ms. Ulrich.

8 MS. ULRICH: Good morning.

9 THE COURT: Okay, you may complete the deposition,  
10 please.

11 MR. KWAWEGEN: Your Honor, before we start, I just  
12 wanted to draw your attention, that I believe you're already  
13 aware of, but I want to make sure. After the deposition was  
14 read, we realized that we had inadvertently read the names of  
15 the wireless carriers into the record.

16 THE COURT: I'd forgotten it, but I'm now refreshed.

17 MR. KWAWEGEN: And that's on page 93 of the  
18 deposition designations.

19 THE COURT: And what are you going to do about that  
20 now? Anything right this instant or do you have a plan.

21 MR. KWAWEGEN: Those names were redacted, your Honor  
22 and that suffices to alleviate any RuleSpace concerns. So,  
23 only the names were redacted. The sentence reads the same.

24 THE COURT: And how did you make sure that the  
25 transcript of that -- Thursday's testimony won't show those



1 names?

2 MR. KWAWEGEN: We have spoken with your Honor's  
3 clerk and he actually took care of it very efficiently.

4 THE COURT: Now, the names are going to come up  
5 again in this reading here, at all?

6 MR. KWAWEGEN: No, your Honor.

7 THE COURT: Okay, thank you for reminding me about  
8 that.

9 MR. KWAWEGEN: The following designation was  
10 designated by the plaintiffs. It's from page 161, line 10,  
11 through page 164, line 23.

12 (The deposition of Alistair Robertson Allan was read  
13 into the record, questions by Mr. Kwawegen and answers by Ms.  
14 Marshall, as follows:)

15 Q Could Microsoft use the original source code that they  
16 acquired from you and use that as a platform to build their  
17 own filters, too?

18 A I -- yes.

19 Q So, if they wanted to, they could filter the Hotmail  
20 accounts?

21 A Yes.

22 Q Does RuleSpace's product categorize websites or web pages  
23 that allow chat to take place?

24 A We do categorize chat sites, yes.

25 Q So, based on the policies of the ISP, it will be able to





1 block those sites?

2 A Yes.

3 Q Same question with respect to instant messaging, does the  
4 RuleSpace product permit an ISP to categorize on there by  
5 blocked access to instant messaging sites?

6 A Not instant messaging sites, I don't believe. Can I  
7 refer to one of the documents here?

8 Q Of course.

9 A I don't know them all off the top of my head.

10 Q Which one are you referring to so I can read with you?

11 A It's the list of categories, it's Exhibit 3.

12 Q Exhibit 3 or 4?

13 A I think it's three, okay, I think I'm looking at the  
14 wrong exhibit. There as another exhibit that had a more  
15 extensive list of categories than this. I thought I  
16 remembered seeing a list of categories that included chat on  
17 it.

18 Q I think you're referring to Exhibit 3, under pornography,  
19 where it says "sex chat rooms"?

20 A That's right. I guess it's not instant messaging, but  
21 it's --

22 Q It would be page 6 of 12, I believe?

23 A Right, that's what it is.

24 Q Okay, I'd like to --

25 A I'm not sure I answered your question though.



1 Q Sorry, it's not listed here?

2 A Right.

3 Q Does it mean that, actually, what does that mean?

4 A I don't, I don't believe we have an instant messaging  
5 site category, right, that contains a list of instant  
6 messaging sites. We have an SMS filter that will recognize  
7 content on text messaging and will substitute asterisks for  
8 bad words on text messaging.

9 (Pause in reading of deposition.)

10 MS. ULRICH: Your Honor, defendants are willing to  
11 waive their objection on this portion of the testimony, for  
12 the record.

13 THE COURT: Thank you.

14 (Reading of deposition continues as follows:)

15 A I don't know any reason that couldn't also be used for  
16 instant messaging. Although, nobody's actually deployed it  
17 yet. I think, I'm pretty sure it worked just fine.

18 Q That actually brings us to the wireless internet content  
19 restriction technologies. For that, I would like to turn to  
20 Exhibit 4. Before we go there, I just wanted to ask some  
21 questions about WIFI.

22 A Okay.

23 Q To what extent does a RuleSpace product compatible with a  
24 WIFI access to the internet?

25 A The WIFI access is going to go through a network device



1 where the radio signal is converted into an electronic signal  
2 that goes out over the standard TCPIP-based internet. The  
3 RuleSpace technology could reside on that equipment and  
4 therefore, be completely compatible with any WIFI content  
5 that was delivered in that manner. Which is, as far as I'm  
6 aware, all WIFI content.

7 Q When you say that equipment, do you mean the equipment of  
8 the network device?

9 A Yes.

10 Q And who would be the owner or proprietor of the network  
11 device?

12 A The carrier would buy that equipment from one of the  
13 system integrators that we talked about earlier. So, it  
14 would be the carrier's device.

15 Q And when you say carrier, you mean Verizon?

16 A Verizon Wireless, whoever, right.

17 Q Besides WIFI, is there any other means of accessing the  
18 internet on a laptop computer? I don't mean the handhelds or  
19 telephone, but just a regular PC that is mobile. Are there  
20 any other ways of accessing the internet except through WIFI?

21 A Serial lines, we plug a dial-up in there.

22 Q And RuleSpace technology would be compatible with that?

23 A Yes.

24 (Pause in deposition reading.)

25 MR. KWAWEGEN: The following section is designated



1 by the plaintiffs. It runs from page 166, line 4, through  
2 page 167, line 18.

3 THE COURT: Is defendant waiving this objection  
4 also, ma'am?

5 MS. ULRICH: No, your Honor, lines 19 through 22 of  
6 page 166, the defendant's objection on that is to  
7 speculation. The witness does say he does not know the  
8 answer and then makes some assumptions in that answer. So,  
9 those lines, the defendant does object to.

10 THE COURT: Let me take a minute to read it.  
11 Instead of waiting and doing it later.

12 MR. KWAWEGEN: We're willing to withdraw that  
13 section, your Honor.

14 THE COURT: Okay. Then you'll state the included  
15 lines that you're going to use, please.

16 MR. KWAWEGEN: Yes. The next section is designated  
17 by plaintiff's. It's page 166, line 4 through page 166, line  
18 18.

19 (Reading of deposition continues as follows:)

20 Q Earlier you discussed access to the internet over,  
21 through Blackberries and phones?

22 A Yes.

23 Q In the context of that address, so that I understand it,  
24 the RuleSpace technology resides with the carrier?

25 A Correct.





1 Q And therefore, if somebody is trying to access the  
2 internet through a phone or a Blackberry, if the carrier is  
3 actually using the RuleSpace technology, the RuleSpace  
4 technology is able to categorize the URL that someone is  
5 trying to access, correct?

6 A That's correct.

7 Q Is the same true with, with respect to PDA's, somebody  
8 who is using a PDA to access the internet?

9 A If you're using it to access the internet, yes.

10 (Pause in reading of deposition.)

11 MR. KWAWEGEN: The next section is designated by the  
12 plaintiffs, it's page 166, line 23, through page 167, line  
13 18.

14 (Reading of the deposition continues as follows:)

15 Q If you can turn to page 4, you briefly discussed this  
16 with Ms. Ulrich. Ms. Ulrich directed your attention to the  
17 second to last sentence, which reads it is absolutely  
18 critical that the solution includes a component that can  
19 rate dynamically generated mobile content?

20 A Yes.

21 Q For context's sake, I just also wanted to say the next  
22 sentence. RuleSpace Real Time Mobile Analysis Toolkit, RMAT,  
23 is specifically designed to do this. How is it specifically  
24 designed to do this?

25 A It is specifically designed to do that because we,



1 referring back to the training process, we gathered content  
2 that had been specifically targeted to mobile pages, mobile  
3 websites and the reason we did that is mobile websites  
4 generate content dynamically, much more frequently than  
5 regular internet websites. So, we found lots of pages from  
6 mobile websites that were generating content dynamically and  
7 trained engines to recognize both clean and inappropriate  
8 content coming from those websites.

9 (Pause in reading of deposition.)

10 MR. KWAWEGEN: The next section is designated by  
11 defendant. It runs from page 167 through page 168, line --  
12 Page 167, line 19 through page 168, line 7.

13 (Reading of deposition continues as follows:)

14 Q In the context of this, you also spoke a little bit about  
15 Vodaphone and having a contract with them?

16 A No.

17 Q Sorry.

18 A I wish we had a contract with them.

19 Q I thought you were pursuing, I misunderstood then.

20 A Want me to clarify the Vodaphone situation?

21 Q Mm-hmm.

22 A I made a comment earlier that no carriers had deployed a  
23 content-filtering solution. And I corrected that to say, no  
24 U.S. carriers had deployed a content-filtering solution. But  
25 that Vodaphone in the U.K. has deployed a content-filtering



1 solution. It's not based on RuleSpace technology.

2 (Pause in reading of deposition.)

3 MR. KWAWEGEN: Page 168, line 19 was designated by  
4 the plaintiffs. Sorry, I didn't read that correctly. Page  
5 168, line 20 through page 169, line 15 was designated by the  
6 defendant.

7 (Reading of deposition continues at this time.)

8 Q So, just to make sure I have it correctly. The sentence  
9 reads, "manually discovery all the statically generated  
10 inappropriate content that is on the mobile internet". How  
11 did you do that?

12 A Manually discovered it. Whether it's actually all, you  
13 know, it was as much as we could possibly find in an  
14 exhaustive search.

15 Q Okay. If you could turn to page 8 where it discusses the  
16 content discovery exercise?

17 A Yes.

18 Q And explains that RuleSpace realized that wireless sites  
19 can be classified in one of three ways. Always clean, always  
20 dirty, sometimes clean and sometimes dirty. And with respect  
21 to sometimes clean and sometimes dirty, it refers to dynamic  
22 sites?

23 A Right.

24 Q Is this still true today?

25 A It's still true that wireless sites can be classified in



1 one of three ways. I don't know whether we still have close  
2 to 100 percent of those sites in OLF.

3 (Pause in reading of deposition.)

4 MR. KWAWEGEN: The next section was designated by  
5 the plaintiffs. It runs from page 170, line 13, through page  
6 171, line 14.

7 (Reading of deposition continues as follows:)

8 Q And then the final paragraph reads, one sentence reads,  
9 "The time to analyze and return a category rating for a  
10 document is primarily measured in milliseconds, depending on  
11 the size of the document and the capabilities of the hardware  
12 used to perform the analysis." Is this still true today?

13 A That's still true.

14 Q Is this the latency that was -- that you discussed  
15 earlier?

16 A Yes, it is.

17 Q Could you explain that just briefly, again?

18 A Sure. The -- explain the latency?

19 Q Mm-hmm.

20 A Okay. When the carrier has done a look-up against the  
21 online look-up system and we've told them it's either an  
22 unknown site or a dynamic site. They have two options. They  
23 can make a policy decision on whether to allow access to that  
24 site. Or they can run a real-time analysis on the content of  
25 the web page being fetched from the dynamic or the unknown





1 site.

2 Q Should they choose to run real-time analysis on the  
3 content, then they take that web page and they send it to the  
4 real-time mobile analysis toolkit, which then analyzes that  
5 page in real time and returns a category that says whether or  
6 not that page is pornography. The milliseconds that are  
7 taken to perform that analysis are the latency that is  
8 described.

9 (Pause in deposition reading.)

10 MR. KWAWEGEN: The next section was designated by  
11 the plaintiffs. It runs from page 174, line 7, through page  
12 178, line 15.

13 (Reading of deposition continues as follows:)

14 Q So, Exhibit 1, page 9 and Exhibit 4, page 13, I believe  
15 you discussed earlier that both these pages discuss the  
16 accuracy of categorization or filtering with respect to  
17 mobile content on the mobile web?

18 A Correct.

19 Q Correct? And in that context, you discussed that the  
20 document that is page 9 of Exhibit 1, describes an 80 percent  
21 accuracy for image filtering?

22 A 87 percent.

23 Q Mm-hmm. And that page 13 of Exhibit 4 shows a 100  
24 percent accuracy for known clean and known porn sites in the  
25 OLS and in 99.48 percent of the real time mobile analysis?



1 A Correct.

2 Q The follow-up question I had was how would the accuracy  
3 of the image filtering have been affected if there had been  
4 any text on the page where the filter -- where the image was?

5 A It depends on the way the application calls our software.  
6 The application being the system's integrator application.  
7 If, let me explain that a little.

8 Q Please.

9 A The way our software is built, you can pass it three  
10 different attributes at the same time. You can pass it the  
11 URL, you can pass it a header, like an http header and you  
12 can pass it the content. The content being either the text  
13 page or the image. So, if you pass our software all of  
14 those, you pass it the URL, you pass it the header and you  
15 pass it the contents, the first -- the first thing we do is a  
16 look-up against the OLS. If we find a known site in the OLS,  
17 that's known to be clean or it's known to be porn or it's  
18 known to be a no-category, we don't even call the image rater  
19 or the text rater --

20 (Pause in reading of deposition.)

21 THE COURT: I would say rater.

22 MS. MARSHALL: Rater.

23 THE COURT: I don't know why, one T suggests rater.

24 (Reading of deposition continues as follows:)

25 A -- to be porn or it's known to be no category. We don't



1 even call the image rater or the text rater because the OLS  
2 accuracy has already been determined to be higher, to be 100  
3 percent. So, if we've already seen it before, we don't call  
4 the real time recognizers. You don't pass it in the URL and  
5 you pass it in just the text. Let me rephrase that. If you  
6 don't pass it in the URL and you pass it in a buffer of  
7 content, right, regardless of whether it's text or image, our  
8 software will look at it. Will examine the header that you  
9 passed along with it. That header will tell our software  
10 whether it's text or whether it's image. If it's text, the  
11 text classifier will run on it. If it's image, the image  
12 classifier will run on it.

13 Now, depending on how you implement that as a  
14 systems integrator, there's a myriad of combinations of how  
15 you want to interpret that. So, most likely, what you find  
16 would do is text on the text page, on the web page. Call our  
17 software passing in the buffer of text and we'll respond to  
18 it and tell them that's porn or it's not porn. And then it's  
19 their choice, if there's images on the page, they can pass on  
20 the images, too.

21 So, it then becomes again the system integrators or  
22 the carrier's decision how to use that information. So, sort  
23 of a long answer to your question. The answer to your  
24 question is the text and the image don't have any impact on  
25 each other, right? It's how they're used by the application,



1 the filtering application.

2 Q And to the extent of the system integrator or carrier  
3 requires both to be analyzed, both the images and the text.  
4 How, if at all, does that impact the accuracy ratings that  
5 you, that we discussed in Exhibit 1 on page 9 and Exhibit 4,  
6 on page 13?

7 A What we would recommend to the carrier is if the -- is if  
8 the text classifier says it's pornography, don't even run the  
9 image classifier. The text classifier is the more accurate  
10 technology, so don't waste the time. Don't take up the  
11 latency of running the image classifier. However, if the  
12 text classifier comes back and says it's not porn, then  
13 you've got a policy decision to make. Is it worthwhile  
14 running it through the image classifier and generally, we'd  
15 say yes. You know, you've got the technology there. It's  
16 going to give you an 87 percent accurate answer. So, yes, in  
17 that case, if you didn't get a hit on the online look-up  
18 service, the text classifier didn't say it was porn, then run  
19 the image.

20 Q I have a similar question or line of questioning about  
21 the accuracy of the non-mobile content.

22 A Okay.

23 Q And that context you discussed that there is 99.52  
24 percent accuracy for non-mobile pornographic content to be  
25 accurately categorized by the RuleSpace technology. Am I





1 understanding you correctly that this is the text-based  
2 version?

3 A Yes. And for English only. Let me clarify that again.  
4 The 99.52 number is the English html accuracy number for text  
5 classification. We have non-English, non-mobile detectors  
6 that are in the 90-some percent accuracy range. I don't know  
7 what they are all per language.

8 Q Are they, in general, based on -- strike that. Earlier  
9 we discussed a number of languages including Russian, Dutch,  
10 French, Spanish. Generally speaking, is the accuracy rating  
11 of the RuleSpace technology 90 percent or more?

12 A Yes.

13 (Pause in reading of deposition.)

14 MR. KWAWEGEN: The next section was designated by  
15 the plaintiffs. It runs from page 181, line 23 through 183,  
16 line 24.

17 (Reading of deposition continues as follows:)

18 Q I just wanted to briefly talk about under-blocking. I  
19 know that a lot of the subjects that we discussed today touch  
20 on this subject. I just want to specifically address some of  
21 the issues surrounding under-blocking. When I say  
22 under-blocking, what would you interpret that to mean?

23 A Under-blocking is what we would term a false negative  
24 where a page or a site actually, does contain inappropriate  
25 content and for some reason, we failed to recognize it.



1 Q How does RuleSpace specifically address issues  
2 surrounding under-blocking?

3 A There is a couple of different ways. We mentioned  
4 earlier a program we have that looks for what we call clean  
5 under dirty site. Clean under dirty -- under dirties, are  
6 indicative of under-blocking. So, that's one of the  
7 mechanisms where we actually scan through the database  
8 looking for clean entries within otherwise known  
9 inappropriate sites. That's probably the most pro-active one  
10 where we actually go look for things. Other than that, it's  
11 addressed during the engine training process as well, where  
12 depending upon the type of engine you're training, you can  
13 bias the training one way or the other in terms of its  
14 sensitivity. For parental controls, you always tend to bias  
15 the sensitivity away from under-blocking and towards  
16 over-blocking. It's much less painful to over-block than to  
17 under-block, right. And so, we provide as part of the  
18 training process, a thresholding mechanism where we decide  
19 how sensitive we're going to make the engine. Those are the  
20 two primary areas that we address.

21 Q When you discussed clean under dirty, you said that was  
22 specifically relevant to categories other than pornography,  
23 am I right?

24 A It's both. What I said is clean under dirty is not  
25 something you necessarily want to remove in non-porn



1 categories. It's perfectly capable. It's valid to have  
2 clean pockets within a tobacco site or a, you know, weapons  
3 site. They may be selling fishing licenses in the same place  
4 because it's a sport shop. Just opposite for porn. If you  
5 find a clean pocket within a porn site, it's almost certainly  
6 a false-negative or you don't care that it's actually got no  
7 porn content on it. It's on a porn site and so we tend to  
8 remove those. The example I gave is the credit card pages.

9 Q How do you approach false negatives from the mature  
10 content site? So, sorry, what I actually meant to say -- my  
11 question was wrong. My question, I actually meant to say is,  
12 what if you find clean pockets on a mature content site?

13 A Okay. You can put a reading node manually anywhere you  
14 want, so there may be reason, I can't think of a real good  
15 reason why you'd want to do that on a mature content site.  
16 There may be, actually, I can think of a reason. There may  
17 be a travel site and that travel site, as part of their  
18 offerings, will have, you know, clothes-optional cruises,  
19 right? So, you may put a mature content rating or, excuse  
20 me, a specific node on that travel site, but there would be  
21 clean directories all around it.

22 Q And earlier you discussed the parental control categories  
23 when you are training the machine and that there was a bias  
24 towards over-blocking. Is this true for all categories?

25 A No. It's true for inappropriate categories. You do just



1 the opposite for productivity enterprise type categories,  
2 such as shopping and sport. It's much more painful for a  
3 business to have a false-positive than to have a  
4 false-negative. You don't want to stop people from getting  
5 to a finance site, if they happen to be a bank or a banker or  
6 something. So, it's just the converse when you're doing  
7 productivity-blocking versus parental controls.

8 Q And the parental controls you use synonymously with  
9 inappropriate content?

10 A Yes.

11 Q Including porn sites?

12 A That's right.

13 (Pause in reading of deposition.)

14 MR. KWAWEGEN: The next section was designated by  
15 the defendant. It's on page 201. And it runs from line 13  
16 through line 20.

17 (Reading of deposition continues as follows:)

18 Q And I know you subcontract out the image filtering from  
19 RuleSpace. Do you have personal knowledge of how the image  
20 filtering works?

21 A Not really. I mean, I know superficially that it learns  
22 to differentiate between different textures, different  
23 contrasts and it looks for facial recognition type features.  
24 Beyond that, I don't know how they, how they do that.

25 (Pause in reading of deposition.)





1           MR. KWAWEGEN: The next section is designated by the  
2 defendant. It's on page 202, lines 17 through 22.

3           (Reading of the deposition continues as follows:)

4 Q Does RuleSpace have the capability to analyze video?

5 A We had the capability of analyzing any of the headers  
6 that may be associated with a video file. We do not  
7 recognize real time streaming files themselves. We can  
8 recognize the sites they came from, but not the real time  
9 image.

10           (Pause in reading of deposition.)

11           MR. KWAWEGEN: The next section was designated by  
12 the plaintiffs. It runs from page 203, line 20 through page  
13 204, line 9.

14           (Reading of the deposition continues as follows:)

15 Q One, maybe two, I just have one question about the  
16 unknowns that Ms. Ulrich just referred to. One way of  
17 receiving unknowns was through the Yahoo look-up service?

18 A Yes.

19 Q And how often does the Yahoo look-up service report  
20 unknowns to you?

21 A Constantly. They are doing look-ups 7 by 24.

22 Q I believe you testified that there were about 26,000  
23 unknowns every day?

24 A Correct.

25 Q So, everyday RuleSpace incorporates and analyzes 26,000



1 new websites or web pages?

2 A 26,000 new sites.

3 Q And analyzes them every 24 hours?

4 A Yes.

5 (Here ends the reading of the deposition  
6 designations.)

7 MR. KWAWEGEN: That concludes the reading of the  
8 deposition designations.

9 THE COURT: All right, thank you very much. That's  
10 the end of the Allan deposition. Do you have any exhibits to  
11 offer?

12 MR. KWAWEGEN: Yes, your Honor. Plaintiffs offer  
13 the following exhibits. Deposition Exhibit 2, which is  
14 Plaintiff's Exhibit 123.

15 THE COURT: 1-2-3?

16 MR. KWAWEGEN: Yes.

17 THE COURT: Any objection?

18 MS. ULRICH: Yes, your Honor, defendant has an  
19 objection and I believe it's going to be the same objection  
20 for all of the exhibits. I don't know if you wanted to  
21 handle them one by one or all at once.

22 THE COURT: Let's hear the overview, please?

23 MS. ULRICH: The objection for the RuleSpace  
24 exhibits is a hearsay objection. While defendant is not  
25 raising authenticity objections, that these are RuleSpace



1 documents, defendant asserts that these documents have not  
2 been shown to be business records to come within the hearsay  
3 exception to the rule. Then those requirements are that if  
4 the record was made at or near the time, that the information  
5 is from a person with knowledge of that information, that it  
6 is kept in the course of regularly conducted business. That  
7 it is the regular practice to record what is in these  
8 documents. And that that's shown by a custodian or qualified  
9 witness with regards to the information within these  
10 documents.

11 THE COURT: Plaintiff's position on the  
12 admissibility, please?

13 MR. KWAWEGEN: Your Honor, we believe that --

14 THE COURT: First of all, are they different for  
15 each document?

16 MR. KWAWEGEN: Actually, your Honor, there is --  
17 there are three documents that are very similar, as Ms.  
18 Ulrich already indicated. Those are Deposition Exhibit  
19 Number 2, which is Plaintiff's Exhibit 123, Deposition  
20 Exhibit Number 3, which is Plaintiff's Exhibit 124 and  
21 Deposition Exhibit Number 5, which is Plaintiff's Exhibit  
22 126. There is one other document, your Honor, that  
23 plaintiffs offer, but it is different from the types of  
24 document that we are discussing right now.

25 THE COURT: All right. Why are Depositions 2, 3 and



1 5 admissible?

2 MR. KWAWEGEN: Your Honor, plaintiffs respectfully  
3 submit that they are business records. These are white  
4 papers that specifically discuss the technology that  
5 RuleSpace employs in technological terms. These are the  
6 documents that RuleSpace makes available to its customers,  
7 which are sophisticated purchasers of the RuleSpace  
8 Technology's products, the mobile carriers or the ISPs. And  
9 they are, therefore, certainly kept in the regular course of  
10 business. And in addition, your Honor, RuleSpace has every  
11 incentive to make sure that these documents are accurate  
12 because it is actually what the purchasers use in the  
13 negotiations with RuleSpace when they decide to purchase the  
14 RuleSpace technology or not. These are certainly not  
15 documents, for example, that were prepared for litigation in  
16 the context of this case.

17 MS. ULRICH: Your Honor, if I could just briefly  
18 make one statement. And that is that the hearsay exception  
19 must come from the testimony and not from counsel's  
20 statements about what these documents are, but from the  
21 witness' statement about what these documents are.

22 THE COURT: Precisely. Where in the deposition  
23 transcript or elsewhere is the ordinary course of business  
24 nature of these documents including that they're used to  
25 inform customers who are going to or have purchased their





1 services or equipment. Where in the record is it shown that  
2 these documents are for that purpose?

3 MR. KWAWEGEN: Although there are various instances  
4 in the record where Mr. Allan discussed these documents and  
5 refers to them as RuleSpace documents, there is no instance  
6 where they specifically address this issue, your Honor.

7 THE COURT: Is that true for Deposition Exhibits 1  
8 or sorry, 2, 3 and 5?

9 MR. KWAWEGEN: Yes, your Honor.

10 THE COURT: In the modest experience of this Judge,  
11 this doesn't come up very often in my mind, so I don't have  
12 any case law at my fingertips. So, I'm thinking about is  
13 there any case law that, if you will, considers documents  
14 like this as self-authenticating and/or constructively  
15 authenticated as business records? I'm not aware of any case  
16 law like that, but that's the concept that's curious to me.

17 MR. KWAWEGEN: If I may address that, your Honor.  
18 There is a 1950 case from the 3rd Circuit, but -- and it  
19 specifically discusses the technical documents in that case  
20 were considered to be self-authenticating because they were  
21 specifically technical reports. However, this is, of course,  
22 a case that predates the Federal Rules of Evidence. And so,  
23 although I believe that it's applicable, I'm not sure how  
24 applicable it is today.

25 MS. ULRICH: And I would like to reiterate, your



1 Honor, that our objection is not an authenticity objection,  
2 but rather a hearsay objection.

3 THE COURT: I know my concept applies, in fact, more  
4 because the documents have a -- since the defendant does not  
5 disagree that these are actually RuleSpace documents and that  
6 they are for purposes of this argument, they are considered  
7 to be, I assume, complete insofar as they suggest such in  
8 their own language. But the issue is whether or not they're  
9 kept in the ordinary course of business. I don't -- Ms.  
10 Ulrich, what do you think? Can you tell if this is not kept  
11 in the ordinary course of business why they would, do you  
12 have an argument as to why these documents exist that would  
13 not be for the purpose of the ordinary course of business?

14 MS. ULRICH: Your Honor, I, to be honest with you,  
15 do not know anything about these documents other than what  
16 the witness testified about them in his deposition. And that  
17 they were given over in discovery. So, I, unfortunately,  
18 your Honor, just don't have any context at all to be able to  
19 answer your question about what these documents are and how  
20 they related to the RuleSpace products, how often they're  
21 changed, how often they're updated or whether or not this  
22 includes accurate information or not. I simply don't know  
23 that information.

24 THE COURT: Do counsel both agree that the witness  
25 never rejected these documents as being unknown to him or



1 excuse the expression, off the wall or inappropriate or  
2 somehow deleterious in some way? I don't remember the  
3 witness doing that.

4 MS. ULRICH: I think the witness, in fact,  
5 authenticated the documents and stated he knew what the  
6 documents were, but that was the extent of his testimony  
7 about these documents.

8 THE COURT: I can't tell whether these documents,  
9 Plaintiff's Exhibits 123, 124 and 126 have any significant  
10 proof in them. I assume the plaintiffs want them in,  
11 obviously, for purpose of arguing something. But I don't  
12 know what they're going to argue. If they haven't been  
13 identified as being kept in the ordinary course of business,  
14 under the Rules of Evidence, the Court is constrained to deny  
15 their admissibility. And I will do so. Exhibits 123, 124  
16 and 126 are not received in evidence. If plaintiffs are able  
17 to provide any authority before the close of the evidentiary  
18 record, I'll reconsider. I think somebody is learning  
19 something about taking depositions of witnesses who might not  
20 come to court.

21 MR. KWAWEGEN: I think you're right, your Honor.

22 THE COURT: Okay.

23 MR. KWAWEGEN: With that in mind, I think we can go  
24 on to the next deposition designations.

25 (Pause.)



1 THE COURT: Deponent is whom?

2 MR. KWAWEGEN: This would be James Ryan, R-Y-A-N.  
3 This was a deposition that was taken on April 7, 2006. Mr.  
4 Ryan is in charge of consumer data business -- of the  
5 consumer data business at Cingular. Your Honor, I have a  
6 complete copy for you, if I may approach.

7 THE COURT: Yes, please. You say consumer data  
8 business?

9 MR. KWAWEGEN: The consumer data business. May I  
10 approach Ms. Marshall with her copy?

11 THE COURT: Yes, indeed.

12 MR. KWAWEGEN: The consumer data business is  
13 actually described in one of the designations that we will be  
14 reading into the record, your Honor.

15 THE COURT: You may proceed.

16 MR. KWAWEGEN: This designation is on page 5, line 6  
17 through 8, designated by the plaintiffs.

18 (The reading of the deposition of James Ryan,  
19 questions by Mr. Kwawegen, answers by Ms. Marshall, occurred  
20 as follows:)

21 Q Would you please state your name for the record?

22 A James Patrick Ryan.

23 (Pause in reading of deposition.)

24 MR. KWAWEGEN: The next designation was designated  
25 by the plaintiffs. It's on page 6, line 7 through 20.





1 (Reading of the deposition continues as follows:)

2 Q What is your current position at Cingular?

3 A I run the consumer data business. That involves the  
4 development, packaging, marketing of our consumer data  
5 products and services.

6 Q And by consumer data?

7 A Those are our messaging services. So, text-messaging,  
8 multi-media messaging, instant messaging, e-mail, our browse  
9 services. So, what we serve in what's known publicly as our  
10 media net service. Our newly launched Cingular video  
11 service, which is our video offering in the market. As well  
12 as all our downloadable services, ring tones, games,  
13 graphics, all those things which we serve to the consumer  
14 target population.

15 (Pause in reading of deposition.)

16 MR. KWAWEGEN: The next designation is on page 7,  
17 it's designated by the plaintiffs. It runs from line 4  
18 through 23 on page 7.

19 (Reading of the deposition continues as follows:)

20 Q Does Cingular provide a product to its customers to help  
21 limit access to the internet?

22 A We do provide a product to help limit access to the  
23 internet. When accessed through Medianet, our browser  
24 service.

25 Q And what is that product?



1 A It's called parental controls.

2 Q Can you tell me a little about parental controls? What  
3 does it do?

4 A It has two primary facilities. The overall intent is to  
5 help parents be able to make decisions about what their kids  
6 could access to and be able to control that access, if they  
7 so choose. It has two elements. One, which is called  
8 content control. And that is set as a default setting off  
9 which means you get general access into the internet. And if  
10 a parent so chooses or actually any individual so chooses to  
11 turn that on, you then are blocked and you can only get  
12 access to Cingular provided content within the Cingular  
13 medianet service.

14 (Pause in the deposition reading.)

15 MR. KWAWEGEN: The next section is designated by the  
16 plaintiffs. It's on page 9, line 7 through page 10, line 7.

17 (Reading of deposition continues as follows:)

18 Q Can you tell me what it does? How does it? What does it  
19 block? How does it work?

20 A Yes. So, when you turn on content control, what happens  
21 is two things. One, everything that is not part of the  
22 medianet service, so either directly served by us or served  
23 through a partner, through which we have a direct  
24 relationship and an understanding and awareness of the  
25 contents that they serve, that's the only place you can go.



1 You cannot leave that place and go to the general internet  
2 within our portal.

3 Q And then within medianet, within your portal, is there  
4 any content filtering or blocking?

5 A There is no content filtering. There is a logical  
6 process of filter which happens at the point where we  
7 contract with someone, decide what goes on to medianet. But  
8 there isn't an active filter necessarily.

9 Q When you say that there is a logical process?

10 A That we'll decide to partner with CNN to get news, so  
11 that is, a decision has been made that you will be able to  
12 get CNN news there, but we don't go every day to filter CNN  
13 news before serving it. We have a contractual relationship  
14 of the type of content they will serve and an expectation of  
15 what that content will be.

16 (Pause in reading of deposition.)

17 MR. KWAWEGEN: The next section was designated by  
18 the plaintiffs. It runs from page 11, line 12 through page  
19 12, line 10.

20 (Reading of the deposition continues as follows:)

21 Q I want to focus you on when you turn on -- first of all,  
22 how easy is it to turn on the filter?

23 A It's quite simple. You can go right into the phone and  
24 it's right within the menu structure there to turn on  
25 parental controls or you can call customer care and they can



1 turn it on for you.

2 Q So, it takes a couple of minutes, at most?

3 A Yes.

4 Q So, let's say you turn it on. I want to get a little  
5 more detail about what happens to the medianet content if you  
6 turn on the parental controls feature on. Some materials is  
7 blocked?

8 A Yes.

9 Q And how do you determine what material is blocked?

10 A There are a number of things that we will look at to make  
11 that determination. First, what we'll look at is if there's  
12 content that's been rated by other bodies to fit in category.  
13 And there are CTIA guidelines for content that Cingular  
14 signed up to, as well as the other players here in the -- the  
15 other wireless carriers here in the U.S. market for what is  
16 and is not appropriate content or what we've deemed to be  
17 restricted content.

18 (Pause in deposition reading.)

19 MR. KWAWEGEN: Next section is designated by the  
20 plaintiffs. It runs from page 21, line 20 through page 22,  
21 line 8.

22 (Reading of deposition continues as follows:)

23 Q You just mentioned pin-protected, what is that? Can you  
24 explain that?

25 A At the point in time when you activate parental controls,





1 you will need to register a pin. A digit number that will  
2 then lock in the ability to go into that control feature.  
3 And you will also have to put in your e-mail address. And  
4 the first assumption being as many different features like  
5 this utilized as a means of control is that only you know  
6 that pin so that your child can't go in and turn off  
7 something that you wanted to have on. But even if they  
8 figured out what your pin was, any change to that pin  
9 generates an e-mail so that you'd know if your kid turned it  
10 back off.

11 (Pause in reading of deposition.)

12 MR. KWAWEGEN: The next section is designated by the  
13 plaintiffs. It's on page 23, lines 6 through 18.

14 (Reading of the deposition continues as follows:)

15 Q And I want to focus you now on the other aspect of the  
16 parental controls product, the purchase control feature?

17 A Yes.

18 Q Can you tell me what does that block you from accessing?

19 A It blocks the user, the individual MIN, the phone number  
20 and the device connected to that phone number, to utilize the  
21 ability to buy value added services on that particular  
22 account. So that you couldn't go buy a ring tone or a  
23 graphic or a game and charge it to the account that that  
24 phone is connected with.

25 (Pause in reading of deposition.)



1                   MR. KWAWEGEN: The next section was designated by  
2 the plaintiffs. It runs from page 24, line 12 through page  
3 26, line 4.

4                   (Reading of the deposition continues as follows:)

5 Q   Okay, and do any aspects that the parent controls product  
6 block, can they be used to block individuals from going to  
7 chat rooms?

8 A   If parent controls is turned on, we remove the chat rooms  
9 that we provide within medianet. And by virtue of the fact  
10 that we don't allow you to leave medianet, then in effect, we  
11 are blocking the chat room.

12 Q   All chat rooms?

13 A   Right. Not to say that we would never offer a chat room  
14 that would be appropriate for that. But that is today's way,  
15 if implemented.

16 Q   What about instant messaging. If you turn the parental  
17 controls feature on, can that block instant messaging?

18 A   Our messaging features today, as they exist, exist as  
19 separate services to the services that I have previously  
20 discussed or that are connected to parental controls.

21 Q   So, parental controls wouldn't affect those right now as  
22 it exists?

23 A   It would not affect those at this time.

24 Q   What about text messaging?

25 A   Text messaging is the same, as well. However, for text



1 messaging and for the instant messaging services and for our  
2 browse services in general, there is always the ability to  
3 turn off the service. So, you can call customer care and  
4 turn off text messaging on your phone or on your child's  
5 phone, if you so choose.

6 Q What about e-mail? Do you also have the ability to turn  
7 off e-mail?

8 A E-mail as it's accessed today is accessed as a browse  
9 service on the phone. It varies if you're on a laptop or  
10 other devices. But on phones today, it's a browse service.  
11 So, it is the way that you would decide whether you wanted to  
12 turn e-mail on or off, would be turning off your browse, the  
13 service itself.

14 Q Can a parent do that, if they so desire?

15 A You can turn off the browser service in total, yes. You  
16 could basically remove data services from a phone and that  
17 would remove it for everything.

18 (Pause in deposition reading.)

19 MR. KWAWEGEN: The next section is designated by the  
20 plaintiffs. It runs from page 28, line 11 through page 29,  
21 line 9.

22 (Reading of the deposition continues as follows:)

23 Q And you mentioned earlier that one of the purposes of the  
24 parental controls product is to give parents control and  
25 choice over what their children access on the internet. Is



1 that correct?

2 A Correct.

3 Q And does the parental controls product do that?

4 A Yes, it does.

5 Q Does it do so effectively?

6 A I believe it to.

7 Q Is one of the purposes of the parental controls product  
8 to make cellular phones safe for children?

9 A Yes.

10 Q And does it do so? You can answer.

11 A I believe it does.

12 Q When you say I believe, you're speaking on behalf of  
13 Cingular?

14 A Yes.

15 (Pause in deposition reading.)

16 MR. KWAWEGEN: Page 29, line 13 through page 30,  
17 line six was designated by the defendant.

18 (Reading of deposition continues as follows:)

19 Q And you mentioned earlier that enhancements to the  
20 products Cingular is constantly, at least, discussing or  
21 thinking about? What was it, please tell me?

22 A As a general rule, one of my jobs to always be looking to  
23 enhance all our products and services. So, we continue to  
24 look for opportunities to better serve our customers.

25 Q And one of the ways to do that would be to better improve





1 the parental controls features?

2 A We are continuing to look at this as one of the products  
3 for further enhancement.

4 (Pause in deposition reading.)

5 MR. KWAWEGEN: Next section was designated by the  
6 plaintiffs. It runs from page 39, line 24 through page 40,  
7 line 20.

8 (Reading of the deposition continues as follows:)

9 Q And do all Cingular customers have internet service?

10 A No.

11 Q What proportion?

12 A I can't speak to the exact number, but in terms of  
13 capable handsets, it is over half of our existing customers,  
14 which would be in the 25 million-plus have access to some  
15 form of wireless internet.

16 Q Have devices that are capable?

17 A Yes.

18 Q Of accessing the internet?

19 A Yes.

20 Q And of those individuals who have internet capable  
21 devices, how many actually access the internet?

22 A Generally speaking, I haven't seen the latest numbers.  
23 But we're averaging about 20 percent of those customers who  
24 have the capability utilize the service on a fairly regular  
25 basis.



1 (Pause in reading of the deposition.)

2 MR. KWAWEGEN: The next section was designated by  
3 the defendant. It runs from page 62, line 22 through page  
4 71, line 10.

5 (Reading of the deposition continues as follows:)

6 Q Good afternoon, Mr. Ryan.

7 A Hello.

8 Q I'm Kenneth Sealls with the United States Department of  
9 Justice on behalf of the defendant, the Attorney General  
10 Alberto R. Gonzales. I wanted to go over two answers that  
11 you gave at the beginning and just seek some clarity on that.  
12 You did testify, didn't you, that Cingular's internet access  
13 product, the parental control devices do not work on all of  
14 them?

15 A Correct.

16 Q Please least for me, naming each one by name, the ones it  
17 does not work on?

18 A I can't answer. I can answer generally.

19 Q Before you answer, sir, I would ask counsel to limit the  
20 objections to non-speaking ones. Yes, please continue.

21 A I can describe generally those that do not have the  
22 feature available.

23 Q Please.

24 A I can't list the specific models.

25 Q To the best of your ability, please?



1 A There are a number of handsets that have an older, mark-  
2 up language as their browser. But this service is not able  
3 to see or the service is not accessible through those  
4 browsers. There are also a number of devices that have  
5 general internet access browsers that don't go directly  
6 through medianet. Including laptops with PCMCIA cards that  
7 would access the internet through the browser, on the laptop,  
8 for which we do not have direct, a direct interface into  
9 parental controls.

10 Q Other than the laptops, can you describe generally what  
11 other such devices there are?

12 A As I stated earlier, there are older devices that have  
13 older browsers that can't use this service.

14 Q What are the older devices called?

15 A There are older handsets that have older lap browsers in  
16 them.

17 Q Do you have any more recent products where your parental  
18 control features do not work?

19 A There are other products that utilize other browsers to  
20 go to other destinations that we sell today.

21 Q What are the names of those other products that you just  
22 testified to?

23 A What are their other names. There are RIM, Blackberries,  
24 as an example. They have a browser that's provided by RIM,  
25 RIM.



1 Q Are there any other examples?

2 A I'm aware of the Trio line, which I believe has a browser  
3 that is a different access mechanism.

4 Q What is the Trio? Can you describe what it is?

5 A The industry term we sometimes use is a smart phone.  
6 It's really a computer and a phone that's combined in a new  
7 way so it has a Q-W-E-R-T-Y keyboard. And it has  
8 applications that it served. It's kind of a combination of a  
9 laptop and phone.

10 Q Can you name any other recent products for which your  
11 parental control features do not work?

12 A Offhand, I can't name the specific devices. There are a  
13 number of devices for business customers that aren't within  
14 my group in the consumer group that have browsers that access  
15 the general internet, that don't go through medianet as a  
16 front end portal.

17 Q I understand that you cannot name the specific products,  
18 but can you name generically what the products are?

19 A They are high-end smart phones. Computer phones that  
20 have CE-operating systems or palm-based operating systems,  
21 computer oriented operating system.

22 Q I'm noticing that you're looking at counsel, is that  
23 right?

24 A Yes.

25 Q Do you need to take a break and confer with counsel?





1 A I am merely looking at her for guidance on -- I'm  
2 reaching for an answer because I think I've already answered  
3 your question.

4 Q I'll ask the next one. You testified about the Firefly  
5 phone, correct?

6 A Correct.

7 Q And you said something to the effect that there are  
8 features that give parents ability to control access to it,  
9 correct? It has been brought up in direct, you have waived  
10 your objection. Sir, what are the features that give parents  
11 ability for control access with respect to the Firefly phone?

12 A I'm not aware of details about the Firefly phone. And  
13 can I ask that my prior statement be reread?

14 Q No. I'm showing you Exhibit Number 4, which I've given  
15 to your counsel and to plaintiff's counsel and I have some  
16 questions to you concerning. Do you see Exhibit 4, sir?

17 A I do.

18 Q What is Exhibit 4?

19 A Exhibit 4 is a piece of collateral that we have prepared  
20 to describe parental controls.

21 Q And this is a two-page document, is it not, that Cingular  
22 distributes to the general public?

23 A Yes, it is.

24 Q Directing your attention to the first page of Exhibit 4,  
25 do you see on the top, the first part within the colored



1 rectangle, asks what is parental controls?

2 A Yes.

3 Q Do you see further down that there is a bullet that says,  
4 "Restrict access to website containing mature content that is  
5 not appropriate for children." Do you see that?

6 A Yes.

7 Q And what does Cingular mean by mature content?

8 A Cingular means that it is content that it deems not to be  
9 appropriate for children. And generally speaking, therefore,  
10 content that CTIA has deemed to be restricted.

11 Q With respect to parental controls, has Cingular received  
12 any complaints from parents regarding their inability to turn  
13 on parental controls?

14 A I'm not aware personally of any complaints about this  
15 particular product and the parent's ability to turn on this  
16 particular product.

17 Q Would it be within your responsibilities as vice  
18 president of consumer data products to be aware of such  
19 complaints?

20 A It would be possible for there to be a complaint without  
21 my being aware of it.

22 Q Would it be probable?

23 A If it was an individual complaint or at most, a small  
24 number of complaints that came directly into my care  
25 organization and given the fact that my care organization has



1 the facilities to turn on parental controls, it is if someone  
2 were to call with a difficulty in turning on parental  
3 controls, that issue would be resolved at the point of the  
4 phone call. And I would receive no information and would  
5 have to -- to the call completion.

6 Q Directing your attention to the next category, moving  
7 down the first page of Exhibit 4, do you see large letters  
8 stating, controlling content?

9 A Yes, I do.

10 Q Do you see that it begins under it, parents can set  
11 content filters to on or off, do you see that?

12 A Yes, I do.

13 Q You testified earlier, did you not, that it's easy for  
14 parents to turn the filter on, correct?

15 A Correct.

16 Q And it's easy, also, for a parent to turn it off, isn't  
17 that correct?

18 A Correct.

19 Q Isn't it easy, also, for a person under the age of 17 to  
20 turn a filter on?

21 A To turn a filter on?

22 Q Correct.

23 A Yes.

24 Q Isn't it easy for a person under age 17 to turn a filter  
25 off?



1 A No.

2 Q Why isn't it?

3 A Because when parental control is first activated, it  
4 requires you to input a pin number. And that pin number then  
5 becomes the means at which you can get back into parental  
6 controls to turn the control off.

7 Q Moving further down the page of Exhibit 4, sir, do you  
8 see the large print which reads controlling purchases?

9 A Yes.

10 Q Do you see further the text underneath it that says  
11 parents can set purchase blockers to on or off. Do you see  
12 that?

13 A Yes, I do.

14 Q Have you received any complaints, sir, about the  
15 inability of parents to turn purchase blockers on or off?

16 A I have not directly seen any complaints.

17 Q And is this similar to parental controls, excuse me,  
18 parental controls something that wouldn't like reach your  
19 level?

20 A If it were not a problem that was not resolved at the  
21 point of first being raised as a problem or was raised in any  
22 kind of magnitude to become a business issue, correct.

23 (Pause in the reading of the deposition.)

24 MR. KWAWEGEN: The next section is designated by the  
25 defendant. It runs from page 72, line 2, through page 78,





1 line 11.

2 (Reading of the deposition continues as follows:)

3 Q What is the range, if there is a charge, that a consumer  
4 would be assessed for turning on and off the purchase  
5 blocker?

6 A In our entry level plan, they would charged a penny per  
7 kilobyte.

8 Q You'll have to forgive me for lacking your knowledge in  
9 kilobytes and the like. On an average monthly bill, how many  
10 kilobytes is to be assessed to an account holder?

11 A Yeah, I -- I don't.

12 Q You mentioned the term kilobytes. On an average bill,  
13 for I think you refer to, for lack of a better term, might  
14 term a cheaper plan. How many kilobytes per months is a  
15 consumer using?

16 A There's a wide range of plans and usage. I can't speak,  
17 I can't answer that as a generality.

18 Q Then I'll rephrase the question in dollar and sense  
19 terms, which I would understand better. How many pennies on  
20 your low-end plan is the average consumer going to be  
21 assessed for turning on and off the blocker?

22 A I cannot speak specifically to how many kilobytes would  
23 be passed for this specific activity. But in a range,  
24 probably anywhere from 10 cents to maybe 50 cents.

25 Q On a monthly bill?



1 A For accessing and using the service. But that would be a  
2 one-time charge.

3 Q One time a month, do you mean?

4 A No. If you went into the service and turned on one of  
5 these features and then ended the session, you would be  
6 charged somewhere between probably ten cents to 50 cents for  
7 that activity. You would never be charged anything else for  
8 that activity.

9 Q So, if ten times the consumer in a monthly cycle, turned  
10 on for ten different activities, the purchase blocker, we're  
11 looking at \$5 that month?

12 A Not correct.

13 Q What would be correct?

14 A When you turn on one of these facilities, they remain on  
15 until you turn them off. So, you would not need to turn the  
16 service on multiple times, unless you turned it off multiple  
17 times.

18 Q That's what I mean and probably inartfully asked. But if  
19 the consumer turns on and off once and then on and off  
20 another nine times within a monthly cycle, based on the 50  
21 cent figure that you gave, that consumer is charged \$5 that  
22 month, correct? How much, based on your testimony, would  
23 such a consumer be charged for that month for the ten times  
24 separately that the consumer turned on and off, turned on and  
25 off, et cetera, the purchase blocker?



1 A Following the same math and the same utilization task as  
2 I earlier described, if someone went in and turned on the  
3 purchase blocker or the control, either one of the control  
4 features, and then exited and then went in again and turned  
5 off that same feature and exited. Each time they did that,  
6 if they had our entry level plan, they would be charged  
7 anywhere from, my estimation, of ten cents to as much as  
8 maybe even 50 cents. If you -- you can do the math on how  
9 many times you want someone to do that.

10 Q Looking further down, were you finished with your answer,  
11 sir?

12 A Yes.

13 Q Looking further down on the first page of Exhibit 4, do  
14 you see the category pricing?

15 A Yes, I do.

16 Q Do you see underneath a text that reads -- and I'm going  
17 to the second sentence. "The only charge is for the brief  
18 data usage needed to set the controls." Do you see that?

19 A Yes.

20 Q Is that a different type of charge than for the purchase  
21 blocker that you've testified to?

22 A That is the charge to which I was earlier describing.

23 Q Moving further down the first page of Exhibit 4, do you  
24 see in large type, "parental controls exclusively from  
25 Cingular"?



1 A Yes.

2 Q Does Cingular mean by that, that parents controls are  
3 only from Cingular or that these listed are exclusively from  
4 Cingular?

5 A These features, which we call parental controls, at the  
6 time which this collateral was printed in the U.S. market, we  
7 were the only carrier offering these features.

8 Q When was this printed?

9 A I cannot speak specifically to the date, but it was prior  
10 to January 1, of this year, I believe.

11 Q Was it sometime in 2005?

12 A I believe it was sometime in 2005.

13 Q I direct your attention to the second page of Exhibit 4,  
14 sir. Do you see on the very bottom, under Cingular Raising  
15 the Bar, and a trademark. Do you see the very small language  
16 that begins, "no filtering is 100 percent accurate and  
17 Cingular wireless does not guarantee filtering accuracy." Do  
18 you see that?

19 A Yes, I do.

20 Q Does Cingular know what percentage of the time that  
21 Cingular wireless filtering is accurate?

22 A The statement -- your question doesn't actually  
23 specifically address the words. The words are, "no filtering  
24 is 100 percent accurate."

25 Q My question was my question. Can you answer that





1 question?

2 A You refer to it as Cingular wireless filtering, That  
3 doesn't say Cingular, it says no filtering is 100 percent  
4 accurate.

5 Q I'll repeat my question.

6 A Okay.

7 Q Do you know what percentage of the time Cingular wireless  
8 filtering is accurate?

9 A It's okay. Cingular wireless, in the way we've  
10 implemented the service, is utilizing a process and a  
11 capability set to deliver the type of content to the type of  
12 customer and target that we intend and for which this product  
13 is intended, that is facilitated through contracts, through  
14 decisions about the type of partners and the type of content  
15 that is served. There isn't an active filtering process in  
16 order to do that. There is a structure in order to do that.

17 Q I'll rephrase the question. The statement here begins  
18 that no filtering is 100 percent accurate. Doesn't it begin  
19 that way?

20 A It does.

21 (Pause in reading of deposition.)

22 MR. KWAWEGEN: The next section was designated by  
23 both plaintiffs and defendants. It's on page 78, lines 12  
24 through 23.

25 (Reading of the deposition continues as follows:)



1 Q Can Cingular testify to how accurate its filtering is?

2 A At this point in time, I could not tell you the exact  
3 percentage of accuracy of our process.

4 Q Can you give me a rough figure?

5 A With my understanding and my belief that the means we  
6 have put in place to restrict access to the types of content  
7 we have described, that we are better than 95 percent  
8 accurate.

9 (Pause in reading of the deposition.)

10 MR. KWAWEGEN: The next section was designated by  
11 the defendant. It runs from page 78, line 24 through page  
12 82, line 16.

13 (Reading of the deposition continues as follows:)

14 Q I want to direct your attention to your wireless products  
15 generally. Can you tell me what are Cingular's wireless  
16 products that enable the user to access the internet?

17 A We offer a service which we call medianet, which allows  
18 individuals to access internet content from their phones. We  
19 offer laptop connectivity products, which allows you to  
20 access the internet from laptops. We offer data packages for  
21 which the exact marketing terms I can't specifically describe  
22 at this moment, because I don't run the business, it's data  
23 team. But for business data customers, there are plans and  
24 offers available for general internet access on Smart Phones  
25 or other computers with integrated radio frequency decks or



1 wireless decks.

2 Q Do any of those different means of accessing -- strike  
3 that -- does Cingular offer any of those different means of  
4 accessing the internet to persons under age 17?

5 A Cingular only sells our services to those individuals who  
6 are of the age to contract, which is 18 or over.

7 Q Does Cingular have any records of the number of users  
8 under age 17, of its internet access products?

9 A We don't ask for and nor do we store the age of our users  
10 of a service.

11 Q Does Cingular have pay as you go phones with internet  
12 content?

13 A We do have, I believe, some internet capability in some  
14 pay as you go phones.

15 Q What are pay as you go phones?

16 A That is not my area.

17 Q Are there any sexually explicit websites available in WAP  
18 through Cingular?

19 A Cingular, through its medianet service, in the sites and  
20 services and contents that we offer underneath that umbrella  
21 of service, does not offer any restricted content as defined  
22 by CTIA.

23 Q Has Cingular received any complaints from parents  
24 concerning the -- any sexually explicit material that is on  
25 WAP?



1 A Yes.

2 Q Roughly how many complaints of that kind has Cingular  
3 received?

4 A I'm not aware of exact numbers.

5 Q Can you give me a ballpark number?

6 A I know the number of complaints over my time in this  
7 position. I do not know of an exact or even a general number  
8 in aggregate that I could comment on.

9 Q Do you know if it's more than 100?

10 A That I am aware of?

11 Q Yes.

12 A It is less than 100.

13 Q Is it more than a dozen?

14 A I'm not comfortable defining further limitations of that  
15 less than 100.

16 Q Does that mean you don't know?

17 A That means that I cannot recall at this moment, how many  
18 there are specifically that I have seen over my time, here to  
19 provide that in (indiscernible).

20 (Pause in reading of deposition.)

21 MR. KWAWEGEN: Page 83, line 3 through page 86, line  
22 21, designated by the defendant.

23 (Reading of the deposition continues as follows:)

24 Q Is your filtering and when I say you, of course, I'm  
25 talking about Cingular wireless. Is your filtering for a





1 laptop the same as it is on broadband products? Is it? What  
2 percent of the laptop filtering is business and what is home  
3 use? Does Cingular offer different levels of filtering for  
4 mature content?

5 A We offer the ability to turn our content filters on or to  
6 have them as off.

7 Q Is that to say that Cingular does not draw distinctions  
8 of one type of material content as opposed to another?

9 A The only distinction that we would draw is that content  
10 is mature or is generally available.

11 Q I want to direct your attention to air cards. Does  
12 Cingular offer air cards for internet access?

13 A Air cards. Can I ask you to provide some more specifics  
14 on what you mean by air card?

15 Q I mean cards that are used in a wireless computer for  
16 purposes of accessing the internet.

17 A Yes. We do offer PCMCIA cars or wireless cards or air  
18 cards, as you described it.

19 Q Is this product, air card, used primarily by business  
20 customers or home-use customers?

21 A I can't comment specifically on our current laptop  
22 market. I don't run that part of the business.

23 Q Do you know generally how many subscribers you have for  
24 laptop service?

25 A I couldn't comment specifically on how many customers we



1 have on our laptop connect service today.

2 Q Do you know how much of the web is accessible via your  
3 air cards?

4 A Our air cards --

5 Q I would use this opportunity to speak because number two  
6 on the categories for deposition, I direct your attention,  
7 talks about the effectiveness of your clients content  
8 filtering and parental control products. Air cards are  
9 certainly one of the products and we are asking questions  
10 targeted towards that category. We'll have to return to this  
11 another time. And we're effectively frustrated from asking  
12 some pertinent questions, relevant questions without prior  
13 notice that what's in the notice has been changed. I will  
14 turn it over, at this point, to the ACLU, but we reserve all  
15 of our rights under the circumstances.

16 (Pause in reading of deposition.)

17 MR. KWAWEGEN: The next designation is on page 90,  
18 line 18 through 23. And this was designated by the  
19 plaintiffs.

20 (Reading of the deposition continues as follows:)

21 Q Is there a way to turn on parental controls without  
22 incurring any costs?

23 A Yes, there is.

24 Q How would you do that?

25 A You can call up Cingular customer care and they can turn



1 it on for you.

2 (Here ends the reading of the deposition  
3 designations.)

4 MR. KWAWEGEN: That concludes the reading of the  
5 designations, your Honor

6 THE COURT: That ends the reading of the deposition  
7 of James Ryan of Cingular. Will a surrogate be required for  
8 the next one also?

9 MR. KWAWEGEN: Yes, your Honor.

10 THE COURT: Not consecutively.

11 MR. FRIEDMAN: I think we're ready for a live  
12 witness, your Honor.

13 THE COURT: Okay, before we finish. Is there any  
14 documents that you plan to offer arising out of the  
15 deposition?

16 MR. KWAWEGEN: No, your Honor.

17 THE COURT: You're excused.

18 (Pause.)

19 MR. FRIEDMAN: Good morning, your Honor.

20 THE COURT: Good morning.

21 MR. FRIEDMAN: Plaintiffs call Professor Ronald  
22 Mann.

23 THE COURT: Would you identify yourself for the  
24 record, please?

25 MR. FRIEDMAN: Yes, your Honor, I'm Seth Friedman,



1 from Latham and Watkins.

2 THE COURT: Remain standing, please, to take the  
3 oath? Thank you.

4 RONALD MANN, Plaintiff's Witness, Sworn.

5 THE CLERK: Please state and spell your full name  
6 for the record.

7 THE WITNESS: Ronald Mann, M-A-N-N.

8 MR. FRIEDMAN: Your Honor, I'm handing the witness a  
9 binder of exhibits. May I approach the bench?

10 THE COURT: Yes, indeed.

11 DIRECT EXAMINATION

12 BY MR. FRIEDMAN:

13 Q Good morning, Professor Mann. Do you see a binder next  
14 to you?

15 A I do.

16 Q Okay, can you please open that and move to the first tab  
17 marked Exhibit 33?

18 A Okay.

19 Q Do you recognize this document?

20 A I do.

21 Q What do you recognize it as?

22 A It's a resume from my website.

23 Q What do you do for a living, Professor Mann?

24 A I'm a law professor at the University at the Texas.

25 Q Can you describe your educational background, please?





1 A I went to undergraduate school at Washington University.

2 And then I went to law school at the University of Texas.

3 Q When did you graduate from Texas?

4 A 1985.

5 Q What was your job after law school?

6 A I clerked for Judge Joseph Sneed on the United States

7 Court of Appeals of the 9th circuit.

8 Q And after your clerkship with Judge Sneed, what was your

9 next position?

10 A I worked for Justice Powell as a law clerk at the United

11 States Supreme Court.

12 Q After clerking for Justice Powell, what was your next

13 position?

14 A I worked at a small law firm in Houston called Dow,

15 Corcoran (ph) & Friedman for about four years.

16 Q And after you left Dow, Corcoran and Friedman?

17 A Then I worked at the Department of Justice. I was in the

18 office of the Solicitor General for about four years. Half

19 in the first Bush administration and then half in the Clinton

20 administration.

21 Q After your position in the Solicitor General's office,

22 what was your next job?

23 A Well, that's when I started teaching and so I went to

24 Washington University in St Louis and I taught in a law

25 school there for about three years.



1 Q Where did you go after the Washington University School  
2 of Law in St. Louis?

3 A Then I went to the University of Michigan and I taught  
4 there for about five or six years.

5 Q And after the University of Michigan Law School?

6 A That's when I came back to Texas and I've been teaching  
7 at Texas ever since.

8 Q What are your areas of scholarly focus?

9 A Generally, I study electronic commerce and payment  
10 systems.

11 Q And what do you mean by payment systems?

12 A Well, what I do really is I study of all forms of payment  
13 systems and so, I study checks, credit cards, debit cards,  
14 letter of credit, wire transfers, ACH transfers, all of the  
15 significant non-cash methods of making payments.

16 Q Are you familiar with the term payment cards?

17 A Yes.

18 Q And what do you understand that term to mean?

19 A Well, generally, people use payment cards as a term to  
20 describe the various card parks people used to make payments.  
21 So, it would include credit cards and debit cards and  
22 pre-paid cards and the like.

23 Q Does your scholarship include the study of payment card  
24 companies?

25 A I written a lot about all the various people that are



1 involved in the payment card in industry, so yes.

2 Q And what about payment card companies do you study?

3 A I study as much as I can about the credit card networks  
4 and about the companies that issue the cards and so I study  
5 the laws that apply to them. I study the business models  
6 that they use to profit. I study the public policy  
7 implications of the card products. How they all fit  
8 together.

9 Q Are pre-paid cards a part of the payment card companies'  
10 business models?

11 A Pre-paid cards are one of the things that I study a lot.  
12 It's a fairly new market, but I've material on that that I've  
13 included in, you know, both of my case books now and then  
14 it's just something I have to work on because it's a, you  
15 know, rapidly increasing part of the market.

16 Q You said you have two case books. Can you tell me the  
17 names of those case books?

18 A Yes. The first one is a case book on payment systems,  
19 which is about payment systems as you might guess. It's  
20 aptly titled. And so it covers all of the payments and some  
21 mentioned earlier, as well as a few other topics. Then I  
22 have another case book on electronic commerce. And that's  
23 generally designed to take a traditional commercial  
24 transaction's class and consider how the internet and  
25 information technology affects that. And so, it takes all



1 the various commercial law subjects and talks about how they  
2 work on the internet. And the most interesting part of it  
3 for me, is the part that relates to electronic payments,  
4 because I'm primarily a payment systems scholar.

5 Q Focusing on your payment systems case book, when was that  
6 first published? I'm sorry.

7 A Yeah, the first edition came out i 1999 and there is a  
8 third edition, 2006.

9 Q Have you published, aside from that case book, have you  
10 published in the area of payment systems?

11 A Yes. And there's the material that's in the electronic  
12 commerce book. And then I have an entire book about payment  
13 cards around the world that came out from Cambridge  
14 University Press a few months ago.

15 Q What's the name of that book?

16 A It's called charging ahead. It actually came out on  
17 September 11th, which is a bad day to publish a book, but I  
18 don't have a lot of control over that, as it happens. So,  
19 then I wrote several Law Review articles about various  
20 aspects of payment systems, including credit and debit cards  
21 and pre-paid cards.

22 Q And are those Law Review articles mentioned in  
23 Plaintiff's Exhibit 33?

24 A Yes.

25 Q All right, can you point them out, please?





1 A Just going back in time, the articles it taught were  
2 substantially about credit cards or debit cards or pre-paid  
3 cards would be the promise of internet intermediary liability  
4 as a 2005 article that talks generally about internet  
5 intermediaries, including payment intermediaries. Making  
6 sense of payments policy in the information age is a 2005  
7 article that talks about the distinction between legal rules  
8 for credit cards and debit cards, particularly on the  
9 internet. Regulating internet payment intermediaries is  
10 about the use of developing payment systems on the internet.  
11 Credit cards and debit cards in the United States and Japan  
12 is a case study about how payment card use in Japan, differs  
13 from payment card use in the United States.

14 Q And then there's a good -- a little bit of a discussion  
15 about credit cards and searching for negotiability in payment  
16 and credit systems, which is an old, 1997 article.

17 Q How long have you been studying payment systems and  
18 payment card companies?

19 A Since about 1996, when I started teaching payment  
20 systems.

21 Q And what do you do generally to understand the systems  
22 and the card companies?

23 A Well, I do as much as I can. I read widely. In  
24 literature, I subscribe to lots of industry periodicals. I  
25 collect data whenever I can find data that I can collect. I



1 talk to people in the industry. I'm a visiting scholar at  
2 the payment card center here at the Federal Reserve Bank of  
3 Philadelphia. And so, I go periodically to talk to people  
4 there and then to meet industry people that come there. I'm  
5 really do everything I can to try and develop an  
6 understanding of how the industry works.

7 Q Can you provide a little more detail about your role as a  
8 visiting scholar at the payment card center?

9 A Well, what the payment card is, is it's sort of a  
10 Government sponsored think tank related to payment cards. It  
11 reflects the fact that most of the large credit card issuers  
12 are located in the district of the Federal Reserve Bank here,  
13 but that includes Delaware. And so, they try to serve as a  
14 clearing house for research about payment cards and they have  
15 a number of academics or visiting scholars who come there.  
16 And then they bring people from the industry and then make  
17 available regulators to talk to the academics to try and  
18 foster an interchange of information back and forth between  
19 -- among regulators, people in the industry and to scholars.

20 Q Do you teach courses in the area of payment systems and  
21 payment card companies?

22 A Yes. Pretty much every year, I teach a class either in  
23 payment systems or in electronic commerce. And much of the  
24 electric commerce class relates to the electronic payment  
25 systems. The most interesting part relates to that.



1 Q You mentioned e-commerce in describing your scholarship.  
2 What is e-commerce?

3 A Well, my electronic commerce case book really covers how  
4 commercial transactions work on the internet. And so, I have  
5 a lot of material there about how the rules for sales and  
6 licenses and payment systems and lending have been affected  
7 by the internet. And the material about payment systems is  
8 particularly interesting to me. And so, there's a lengthy  
9 chapter about that.

10 Q Can you tell us the name of the e-commerce case book?

11 A Yes, it's called Electronic Commerce.

12 Q When was this first published?

13 A 2002. And then there was a second edition last year.

14 Q What do you do generally to build your understanding of  
15 e-commerce?

16 A Well, again, I read widely in the literature. I talk to  
17 as many people as I can. I collect data. One of the  
18 projects I'm doing now, I've got a large database of internet  
19 retailers to try and study trends in internet retailing and  
20 how they design their websites. Everything I can to try and  
21 learn about it from an academic perspective. It's probably  
22 the current books in my scholarship really is now electronic  
23 commerce.

24 Q And do you teach course in this area?

25 A Almost every year I teach the electronic commerce class.



1 The only years I don't teach it are the years that I teach  
2 payment systems instead.

3 Q Aside from the case book, are there other works listed in  
4 your resume that you've published relating to e-commerce?

5 A Yes, several of the articles I mentioned before are  
6 particularly directed at electronic commerce in the internet  
7 and so I would refer to the promise of internet intermediary  
8 liability, which is the fourth item on page 2, making sense  
9 of payment policy in the information age. The regulator  
10 internet payment intermediaries, those are really the main  
11 ones.

12 Q How long have you been studying e-commerce?

13 A Probably since about 2000, right before the bubble burst.

14 Q As part of your scholarship in these two areas, payment  
15 cards and e-commerce, do you study the use of payment cards  
16 in e-commerce?

17 A Yes. That's the most interesting part of the electronic  
18 commerce book and really what distinguishes my work from the  
19 work of other people. That I'm the person that does payment  
20 systems on the internet and most of the other people come  
21 from some different area.

22 Q Have you studied how payment cards operate in other  
23 countries?

24 A Yes.

25 Q Which countries?





1 A Well, as many countries as I can. I've done some  
2 extended work in Japan and in England, at the central banks  
3 of those countries. And then I, for my book, spent a lot of  
4 effort collecting data and studying how payment card work in  
5 different countries, because a large part of the book is to  
6 understand why credit and debit card are used so differently  
7 every place else in the world from how they're used here.

8 Q Have you studied the extent to which payment card  
9 networks will take steps to assist in the enforcement of U.S.  
10 Laws?

11 A Yes.

12 Q Have you published in that area?

13 A Yes. There's a little bit of that material in the  
14 electronic commerce book, but it's really the focus of this  
15 piece, the promise of internet intermediary that's the fourth  
16 item on page 2 of my resume.

17 Q That's the William And Mary Law Review article?

18 A Yes.

19 MR. FRIEDMAN: Your Honor, at this point, I would  
20 like to move his resume, Plaintiff's Exhibit 33 into  
21 evidence.

22 THE COURT: Any objection?

23 MR. TODD: No objections, your Honor.

24 THE COURT: Plaintiff's 33 is received in evidence.

25 (Plaintiff's 33 received in evidence.)



1 BY MR. FRIEDMAN:

2 Q Please turn to the next tab marked Plaintiff's Exhibit  
3 34.

4 A Okay.

5 Q Do you recognize that document?

6 A Yes.

7 Q What do you recognize of that?

8 A That's a photocopy of the report I submitted in this case  
9 this summer.

10 Q And do you recall who you submitted the report on behalf  
11 of?

12 A Plaintiffs.

13 Q Can you tell me what the following terms mean in the  
14 payment card industry, credit card?

15 A Well, a credit card is a payment card product that draws  
16 on a line of credit. And so what that means is that when you  
17 use a credit card to purchase something, the charge goes  
18 directly to this line of credit and so you have to pay this  
19 back over time and it's usually an open-ended line of credit  
20 where you get to select each month after you receive a bill,  
21 the amount that you want to pay every month on the account.

22 Q Can you tell me what the term debit card means in the  
23 payment card industry?

24 A Well, see, a debit card is very different. A debit card  
25 ordinarily is tied to a demand deposit account at a financial



1 institution. So, usually you're talking about a checking  
2 account. And so, what happens when you use a debit card,  
3 even though the card looks much the same and the transaction  
4 will appear the same at the retailer, it's posted more or  
5 less immediately, one or two business days, probably, to the  
6 checking account and the money comes automatically out of the  
7 checking account. You don't decide how much comes out or  
8 when it comes out. The whole transaction comes out of the  
9 account pretty quickly, automatically.

10 Q Can you tell me what the term pre-paid card means in the  
11 payment card industry?

12 A Well, a pre-paid card is a product that resembles the  
13 debit in the sense that there's no credit line. But it  
14 doesn't go to your bank account. It goes to funds that you  
15 have previously given to the person from whom you bought the  
16 card. So, for example, you might go to a convenience store  
17 and you might buy a card for \$55 and they might keep five  
18 dollars as a fee and then the \$50 would be a balance on the  
19 card. And when you used the card, the transaction would be  
20 drawn against that \$50 that you've given them. And then when  
21 the \$50 dollars runs out, there is no more money on the card  
22 unless it has a feature that allows you to reload it, which  
23 some of them do.

24 Q Can you explain with a little more detail what occurs at  
25 the convenience store that you just referred to?



1 A Well, you go and buy the card and the convenience store  
2 is selling you the card. And the products that are  
3 successful will have a Visa or Mastercard logo on it and it  
4 will look much like a conventional credit card. And after  
5 you give them the money, you have the card and the card can  
6 be used at retail locations that take Visa and Mastercard  
7 products.

8 Q So, these cards actually have the Visa or Mastercard logo  
9 on their face?

10 A Yes, ordinarily. If they don't have the Visa or  
11 Mastercard logo on them, then they are not as useful, because  
12 you can only use them at a limited set of merchants. There  
13 are some pre-paid cards that don't have those logos on them  
14 and those products are successful but it's not as growing as  
15 rapidly, I think, as the ones that have a Visa or Mastercard  
16 logo on them.

17 Q Aside from the pre-paid card you just described, are  
18 there other types of pre-paid cards that you're aware of?

19 A Yes. I mean, it's a rapidly growing, changing market.  
20 There's several products that are, you know, have varying  
21 levels of success and are growing rapidly. A few that are,  
22 you know, worth talking about perhaps are a payroll card and  
23 then just sort of a general spending card. You could also  
24 talk about sort of the parent facilitating cards where they  
25 try and have the parents cooperate in them. But there's





1 various niches of products.

2 Q Taking them one at a time, can you briefly explain what a  
3 payroll card is?

4 A Well, the payroll card is the card that an employer uses  
5 to pay people that don't have bank accounts. And so, if  
6 someone doesn't have a bank account, it used to be that they  
7 would have to cut a check for each one of those people and  
8 that costs some amount of money for each person. And the  
9 person that gets the check has to go cash the check, because  
10 they don't have a bank account where they can deposit it.  
11 And that costs some amount of money. And so, instead, they  
12 can give them a card, a Visa or Mastercard product and they  
13 can put the salary, you know, on the card in the sense that  
14 the card can be used to spend up to the amount of the salary  
15 and then they add the salary to the account every month. And  
16 the person receives substantially the entire amount of the  
17 salary because they don't have to pay a check-cashing fee.  
18 And so, that's a very successful product. Mcdonald's has a  
19 major pre-paid card, salary card product.

20 Q Do you have an opinion as to why Mcdonald's uses the  
21 card?

22 A Well, Mcdonald's uses it because they have a large  
23 portion of their employee base that doesn't have checking  
24 accounts. And so, they have a lot of children who are  
25 employees. And if they have children who are employees who



1 don't have checking accounts, it's easier to pay them with --  
2 and cheaper to pay them with a pre-paid card than by paying  
3 by check.

4 MR. TODD: Objection, foundation. We're talking  
5 about things without any foundation.

6 THE COURT: Well, counsel will decide what to do  
7 about that. Strike the answer about the -- question and  
8 answer about why McDonald's uses the payroll card. And  
9 counsel can lay a foundation, if he wants to, after we have a  
10 ten-minute recess.

11 THE CLERK: All rise.

12 THE COURT: Court's in recess for ten minutes.  
13 Counsel are excused, we're off the record.

14 (Court in recess; 11:05 to 11:14 o'clock a.m.)

15 THE COURT: Welcome back. Before we proceed, I  
16 forgot, and I apologize, forgot to tell you that I have to  
17 attend a Board of Judges meeting today like I did the other  
18 Monday so we'll recess from 12:45 until 2:00 o'clock when we  
19 get there. Okay?

20 We're back on the record. Professor, please be  
21 seated.

22 BY MR. FRIEDMAN:

23 Q Professor Mann, do you have knowledge as to why  
24 McDonald's uses prepaid cards for payroll purposes?

25 A Yes.



1 Q How do you have this knowledge?

2 A Well, it's one of the things I study is the credit card  
3 industry. And so I mean I subscribe to lots of industry  
4 periodicals and news sources and services of various kinds  
5 and this is a product that's prominently and frequently  
6 described in the industry press. That's where I get a lot of  
7 my information is from stories that are in the industry press  
8 about these products.

9 Q Why does McDonald's use prepaid cards for payroll  
10 purposes?

11 A Well, the product's very attractive for them because they  
12 have a lot of employees that don't have checking accounts  
13 into which they can directly deposit salary. And so it's  
14 more profitable for them than it is for an employer that has  
15 a larger share of employees into which salaries can be  
16 directly deposited.

17 MR. TODD: Objection, foundation, motion to strike.  
18 The witness has not been proffered as an expert.

19 THE COURT: Response?

20 MR. FRIEDMAN: Your Honor, I'm happy to proffer the  
21 witness as an expert in payment card systems and payment card  
22 industry, payment cards, E-commerce. I thought we'd laid a  
23 full foundation for that earlier in the direct.

24 THE COURT: The question is withdrawn. If you want  
25 to qualify him as an expert then offer him and we'll see what



1 happens.

2 MR. FRIEDMAN: Okay, your Honor, I'd like to offer  
3 Professor Mann as an expert in the area of payment systems,  
4 payment card companies, business models of payment card  
5 companies and the use of payment cards in E-commerce.

6 MR. TODD: Your Honor, defendant objects to the  
7 extent that Professor Mann is being proffered as an expert as  
8 part of their case in chief. Professor Mann submitted only a  
9 rebuttal expert report in this case so his testimony should  
10 be confined to that of a rebuttal witness.

11 THE COURT: I don't know what the effect of the  
12 label on the report is, I'm more concerned about the  
13 substance of his testimony. I don't know about the tactics  
14 of the plaintiff in putting titles on work being done on  
15 their behalf to prepare for trial. So I'm at a loss to know,  
16 maybe I'll hear from plaintiffs as to --

17 MR. FRIEDMAN: Your Honor, there was no tactic, it  
18 was filed as a rebuttal report. However, there was extensive  
19 information on which he sat through a deposition and  
20 questioned about, all of which subject of today's testimony.

21 The fact that we were proffering him to -- we're  
22 going to put him up as part of the case in chief has been a  
23 fact that has been well noted and disclosed and I believe it  
24 was even discussed during a hearing a couple weeks back. So  
25 I don't believe there is any reason why at this point he





1 shouldn't be permitted to testify to the full extent of his  
2 report.

3 MR. TODD: Your Honor, again the defendant does not  
4 object to him testifying to the full extent of his rebuttal  
5 report which was submitted in July, approximately July 7th,  
6 2006. But the defendant continues to object to his testimony  
7 as part of the plaintiff's case in chief. There has been no  
8 prior notice that he would do anything other than serve as a  
9 rebuttal expert in this case.

10 THE COURT: Any final word on that, Counsel?

11 MR. FRIEDMAN: Yeah, your Honor. I believe he was  
12 listed in the witness lists that were exchanged as part of  
13 the case in chief and that his status as a witness as part of  
14 the case in chief was discussed in this courtroom at a  
15 hearing and I believe it was on October 16th but I'm not  
16 entirely sure of the exact date.

17 THE COURT: Yes, sir.

18 MR. TODD: Again, your Honor, just because they list  
19 him during this time, we assumed it was for scheduling  
20 purposes. There was no -- there was never an express proffer  
21 that it was part of the case in chief on the record or in any  
22 documents.

23 THE COURT: The objection is overruled. This  
24 witness has been laid bare by complete expert deposition  
25 reports rendered, I find no significance whether you put the



1 word rebuttal on this report. It may be that he will rebut  
2 some things that the defense people will say, I don't know  
3 that. But there's no prejudice to the defense and we would  
4 be granting great power to the word "rebuttal" in a report  
5 that would just stand that whole process on its head. We're  
6 here to give substantial access to the witness by the  
7 defense, that's been done, the witness will testify. Under  
8 Rule 702 the witness is qualified as an expert in the four  
9 items, E-commerce, payment cards -- can't read my sloppy  
10 writing. The third one?

11 MR. FRIEDMAN: Payment card companies.

12 THE COURT: Oh, business models in the card payment  
13 systems?

14 MR. FRIEDMAN: Yes.

15 THE COURT: Okay. That's my ruling. You may  
16 proceed.

17 BY MR. FRIEDMAN:

18 Q You mentioned before that there were three general types  
19 of prepaid cards. We've discussed a payroll card, I believe  
20 the second one, the second type you referred to as a parent  
21 cooperating card. Can you describe generally what you meant  
22 by that term?

23 A Yes, and I apologize for the inarticulate labels, I'm not  
24 good at coming up with good terms. One of the early tactics  
25 for these cards has been to develop products that are



1 designed to get parents to help teach their children to use  
2 payment cards.

3           The, you know, driving force behind trying to get  
4 cards into the hands of children is the idea that if you can  
5 get cards in the hands of children as young as possible  
6 before they have a fully developed sense of financial  
7 responsibility, when they grow up they'll be more easily  
8 habituated into being regular payment card customers and be  
9 profitable customers to the cardholders.

10           It's the same thing as when cigarette companies try  
11 to get cigarettes into the hands of minors as fast as they  
12 can. And so one of the tactics with prepaid cards is to  
13 market them to parents and so there's a product, the Visa  
14 Buxx card is probably the most famous one, where they try and  
15 get parents to help --

16           THE COURT: The most famous one?

17           THE WITNESS: Visa Buxx, and it's spelled B-u-x-x.

18           THE COURT: Right.

19           THE WITNESS: And the idea is if they can get the  
20 parents to help then the children will have a card with the  
21 full cooperation of their parents and the long-term business  
22 purpose is to have people before they get away to college  
23 accustomed to using payment cards for their regular spending  
24 activity. And that's a prepaid card product that's been  
25 heavily distributed although it's been less successful,



1 largely because most parents are justifiably cynical about  
2 the ultimate effect of the product.

3 BY MR. FRIEDMAN:

4 Q You mentioned a third type of prepaid card, what is that?

5 A Well, that's a harder to define category but -- and I  
6 didn't speak that well when I spoke earlier. What I would  
7 characterize as a niche, a market that the product serves.  
8 And one of the things that prepaid cards provide is a way for  
9 somebody to buy things anonymously. And so even if you're  
10 somebody that can't get a regular credit card or debit card  
11 or just somebody who doesn't want to have a regular credit  
12 card or debit card in your name you can go to a convenience  
13 store or grocery store and you can buy a prepaid card and you  
14 can use it to buy things in a relatively anonymous way.

15 MR. TODD: Objection, foundation, motion to strike.

16 MR. FRIEDMAN: Your Honor, he mentioned three  
17 different types of prepaid cards, I was just asking.

18 THE COURT: Overruled. This gentleman is an expert  
19 in this whole field so we're going to let him testify about  
20 them, assuming it's within the range of his report and you'll  
21 bring it to my attention if it isn't, defense will. Thank  
22 you.

23 BY MR. FRIEDMAN:

24 Q Were you finished with your explanation of this third  
25 type of prepaid card?





1 A I think I was but I'm not sure if something I said was  
2 stricken or not.

3 Q Okay. I don't believe it was.

4 A If nothing was stricken then I've said everything I  
5 wanted to say.

6 Q About this third type of prepaid card?

7 A Yes.

8 Q Okay. We'll come back to that in a moment.

9 THE COURT: Just so we don't misstate the trial  
10 judge, what is this type of payment card labeled?

11 THE WITNESS: Well, there's not really a label, I  
12 would characterize it as a niche and the niche is really for  
13 anonymous payments. See, if you buy this kind of card --

14 THE COURT: A niche or just a methodology of the--

15 THE WITNESS: It's the reason people buy the  
16 particular product. The earliest product is a product you  
17 would go to a convenience store or a drugstore and you'd buy  
18 a Mastercard prepaid card.

19 THE COURT: It's not a special card, it's just the  
20 way it's used.

21 THE WITNESS: It's the way that it's used. That's  
22 one of the reasons that the card grows. And it's not the  
23 payroll card product which has a particular attribute and  
24 particular regulatory implications and it's not this Visa  
25 Buxx product. It has a lot of features designed to attempt



1 to co-opt parents into the process of capturing children,  
2 it's just a different way the product's used.

3 THE COURT: Thank you.

4 Counsel.

5 BY MR. FRIEDMAN:

6 Q And what is -- do you know of any cards of this type, the  
7 names of any cards that fall into this third category?

8 A Well, the earliest was -- the earliest one was just a  
9 simple Mastercard product. And I don't actually recall the  
10 bank that issued it but it was distributed widely at  
11 drugstores and convenience stores.

12 In recent years what's happened is people are now  
13 trying to make this product more readily useful for access on  
14 the Internet which is technologic a little more difficult and  
15 the most successful issuer there is a company called  
16 Netspend.

17 Q We'll come back to --

18 THE COURT: Spell that for the record, please.

19 THE WITNESS: It's N-e-t-s-p-e-n-d and the brand  
20 name of that product is All-Access, it's called the All,  
21 hyphen, Access card because it has access at all places.

22 THE COURT: What does Netspend mean if All-Access is  
23 the name of the card?

24 THE WITNESS: Well, I don't know what their  
25 marketing plan is, Netspend is the domain name so it's at



1 Netspend.com is the name of the place where you would go to  
2 validate the cards and that's the name of the company. The  
3 particular product that is advertised on the stores, the  
4 brand name on the card is All-Access in very large red, white  
5 and blue letters.

6 THE COURT: Thank you.

7 BY MR. FRIEDMAN:

8 Q We'll come back to the Netspend card in a moment. We  
9 were discussing the definitions -- I'm sorry -- the meanings  
10 and terms as you understand them in the payment card  
11 industry. What do you understand the term "debit account" to  
12 mean in the payment card industry?

13 A Debit account is not a term that I think is commonly used  
14 in the industry.

15 Q What about the term "account," what do you understand  
16 that to mean?

17 A Well, account is an important regulatory term because the  
18 Federal regulatory framework divides products into three  
19 categories. There's a category of products that are governed  
20 by the Truth in Lending Act and that's generally credit  
21 cards.

22 There's a category of products that are governed by  
23 the Electronic Fund Transfer Act and by Regulation E. And  
24 Regulation E is a Federal Reserve Board regulation that  
25 implements the Electronic Fund Transfer Act.



1           And then there's a category of products that aren't  
2 governed by anything and the defining term is account.

3 "Account" is a term in the EFTA and in Regulation E and if  
4 your product uses an account, quote, "account," quote, then  
5 it has to be, as people would say, Regulation E compliant.  
6 You have to comply with Regulation E. If it doesn't involve  
7 an account then you don't have to comply with Regulation E  
8 and that is administratively cheaper.

9 Q Do you have an understanding, understanding generally how  
10 the term "account" is defined?

11 A Well, it's defined in the statute to very broadly and  
12 people in the industry, I think, have some uncertainty as to  
13 exactly how it applies to prepaid cards and the reason is  
14 because of the regulatory history. The Federal Reserve Board  
15 stepped in in the 1990's and tried --

16           THE COURT: In my mind we're kind of off the subject  
17 of the question. Would you ask another question, please?

18           Let me tell you something, Professor. Lawyers and  
19 professors don't make great witnesses for the following  
20 reason: they're used to being helpful and complete and often  
21 the questioner wants certain information and he wants it in  
22 bites. So just listen to the question and answer the  
23 question. If there's another question he wants to ask you,  
24 answer that. Otherwise you're going to be giving us, with  
25 all due respect, a mini-lecture on something that counsel may





1 not need. I don't know what he needs and I'm not going to  
2 interfere with it, but it would be helpful. Just listen to the  
3 question and answer the question.

4 THE WITNESS: Sorry.

5 THE COURT: Thank you.

6 MR. FRIEDMAN: Thank you, your Honor.

7 BY MR. FRIEDMAN:

8 Q You described your understanding of the meaning of the  
9 term "account." Do prepaid cards, as you've described them  
10 before, fall within that definition?

11 A Sometimes.

12 Q In what situations?

13 A I think there's a lot of -- I think there's some  
14 uncertainty in the industry as to when they do and when they  
15 don't. Probably in my opinion the best dividing line would  
16 be to say that the cards that process against value that  
17 resides on a remote server are given by accounts and those  
18 where the value really resides on the card, you don't check  
19 against some balance on a remote server, don't involve  
20 accounts. And that's somewhat technical but that's my view  
21 as to what the best way to apply the definition is and I  
22 think most people in the industry would agree with something  
23 like that.

24 Q In your view would the third category of prepaid cards,  
25 the niche category you referred to, would that fall within



1 the definition of "account"?

2 A Yes. All these Visa and Mastercard products, what makes  
3 those products so successful is that they process through the  
4 Visa and Mastercard networks back to something at the Visa or  
5 Mastercard bank member that's issued the card. And so I  
6 think all of those should be treated as Regulation E  
7 compliant products.

8 Q You said before that you have studied the business card  
9 models of payment card networks, is that right?

10 A Yes.

11 Q Do you have an opinion on how these business models are  
12 trending?

13 A Yes.

14 Q Can you describe that opinion?

15 A Yes, I think that what you see over the last 15 years is  
16 an increasing trend towards differentiation of products as  
17 technology makes it easier to identify larger and larger  
18 groups of profitable customers and you also see an increasing  
19 saturation in the easiest groups of people to identify. So  
20 that means that you see people looking after, you know,  
21 harder and harder groups of people to get as customers.

22 Q Is there any section of society that you see these  
23 business models focusing on?

24 A One of the most interesting trends now is efforts to try  
25 and get cards into the hands of people at an earlier and



1 earlier age.

2 Q When you say an earlier and earlier age can you describe  
3 what age group you're referring to?

4 A Well, for several years, probably about a decade, there's  
5 been a lot of controversy about efforts to market cards to  
6 college students, which is now very pervasively done. But  
7 increasingly over the last several years there's been a  
8 greater effort to design products that are useful or that are  
9 attractive to children. And by children I mean people under  
10 the age of 17.

11 Q Going forward if I use the term "children" will you  
12 understand it to mean individuals under the age of 17?

13 A Yes.

14 Q Do you know why payment card networks are so focused on  
15 children?

16 THE COURT: Answer yes or no, please.

17 THE WITNESS: I'm assuming when you say payment card  
18 networks --

19 THE COURT: Did you hear what I said? Answer the  
20 question yes or no, then --

21 THE WITNESS: I don't understand the question.

22 BY MR. FRIEDMAN:

23 Q Okay. Do you have an understanding as to why payment  
24 card companies generally are focused on marketing to  
25 children?



1 A I don't understand the question. When you refer to  
2 payment card companies that's not really a term I commonly  
3 use.

4 Q Okay. Are you familiar with the term "issuer"?

5 A Yes.

6 Q Okay. What do you understand "issuer" to mean?

7 A I think that issuers are focused on trying to get their  
8 products in the hands of children, yes.

9 Q Can you describe what you understand by the term  
10 "issuer"?

11 A Yes, the issuer is the bank that has the relationship  
12 with the cardholder that has actually issued the card and  
13 that's distinct from the network, Visa or Mastercard.

14 Q Do you have an opinion as to why issuers are focusing  
15 their marketing efforts on children?

16 A Yes.

17 Q And how do you -- what is that opinion based on?

18 A The opinion's based on my trying to understand and  
19 studying the business models that credit card issuers are  
20 deploying the last several years.

21 Q What is your opinion on why credit card issuers are  
22 marketing children?

23 A Well, one of the, you know, most prominent things credit  
24 card issuers try to do now is identify customers who are  
25 likely to borrow money and pay it off over a very long period





1 of time in very small amounts because those people will  
2 generate a lot of revenues, a great deal of profit for the  
3 issuer because the interest rate at which interest accrues is  
4 so much higher than the cost of funds for the credit card  
5 issuer. If you want to have a portfolio that has as many of  
6 those people as possible, you want to try to find people when  
7 they're young so that they can borrow money and spend a long  
8 time repaying it and because when they're young they are less  
9 likely to have a fully developed sense of financial  
10 responsibility that might make them harder to attract as  
11 customers.

12 Q Do you have an opinion of the estimate of children that  
13 will have access to payment cards before they turn the age of  
14 17?

15 A Yes.

16 Q What is your opinion of that estimate?

17 A I think the best guess would be the range of 50 percent.

18 Q How do you reach that estimate?

19 A Well, I think there's two ways I would try and collect  
20 information to answer that question. The first is to look at  
21 information about the percentage of children that shop on the  
22 Internet and the second is to try and look at surveys that  
23 try to collect information about the share of children that  
24 would report that they have payment cards.

25 Q Taking those one at a time, why is understanding the



1 percentage of children that shop on the Internet relevant to  
2 your opinion of the estimate of children that will have  
3 access to a payment card at some point before they reach the  
4 age of 17?

5 A Because the great majority of Internet retail  
6 transactions use a general purpose payment card to pay for  
7 them, probably something in the range of 90, if not -- 90  
8 percent if not higher. And so if you can get an accurate  
9 figure of the number of children that are shopping on the  
10 Internet that gives you a good indicator of the number of  
11 children that have sufficient access to a payment card to  
12 complete a retail transaction.

13 MR. TODD: Objection, foundation, move to strike.  
14 There's no basis for these quantities.

15 THE COURT: Also, for the plaintiffs, what's your  
16 response?

17 MR. FRIEDMAN: Your Honor, the question was whether  
18 he -- he mentioned that his opinion on the access of children  
19 to payment cards, relevant to that is the amount of children  
20 who shop online. I was asking him why that's relevant. He  
21 did mention a statistic and I'm happy to ask him for the  
22 basis of that statistic.

23 THE COURT: I'm not sure I understood this answer in  
24 any event.

25 THE WITNESS: Great answer.



1           THE COURT: Lay a foundation and we'll remake the  
2 motion if appropriate.

3 BY MR. FRIEDMAN:

4 Q Do you have any understanding of the percentage of  
5 children who shop online?

6 A Yes.

7 Q And is that understanding relevant in any way to your  
8 opinion on the estimate of children that have access to a  
9 payment card?

10 A Yes.

11 Q Why is your under-- why is the amount of individuals that  
12 shop online relevant to your understanding of the percentage  
13 of children that have access to a payment card?

14 A Because the great majority, almost all, about 90 percent  
15 of shopping on the Internet is done with payment cards.

16 Q How --

17           MR. TODD: Objection, foundation, same objection.

18           THE COURT: Lay a foundation.

19 BY MR. FRIEDMAN:

20 Q Do you know the percentage of children that shop online?  
21 I'm sorry, do you know, for the children that shop online, do  
22 you know how they shop online, what their method is?

23 A Yes.

24 Q And what do you understand that method to be?

25 A Overwhelming majority of those transactions use payment



1 cards.

2 MR. TODD: Objection, foundation.

3 THE COURT: You never laid the foundation. Strike  
4 it out, strike the question and answer, start over.

5 BY MR. FRIEDMAN:

6 Q Of the children that shop online do you know -- do you  
7 know the method they use to shop online?

8 A Yes.

9 Q How do you know that method?

10 A Because it's something that people, people commonly  
11 survey from Internet retailers, the types of payment  
12 instruments that are used for particular payment  
13 transactions.

14 Q And do you have any understanding of the percentage of  
15 children who shop online or the percentage of individuals  
16 generally that shop online, what method they use?

17 THE COURT: Excuse me for interrupting but you  
18 didn't finish what you were about to do if that's what you  
19 were about to do. You asked him how he knew something and he  
20 said well, there are surveys and records and material kept on  
21 the subject. That's not a foundation for your question. It  
22 just shows that there is a source of information.

23 BY MR. FRIEDMAN:

24 Q Can you describe any of the surveys that you are  
25 referring to?





1 A Yes, the most, for me I think the most reliable surveys  
2 are the ones that are done by a company called Celent. I'm  
3 not even sure how you say it but it's spelled C-e-l-e-n-t and  
4 they do these surveys periodically and the most recent one  
5 with which I'm familiar is a 2005 one and I believe the  
6 number in that survey is 88 percent.

7 Q What number are you referring to?

8 A The number of the shared Internet retail transactions  
9 that are accomplished with a payment card, a general purpose  
10 payment card.

11 MR. TODD: Objection, move to strike. None of  
12 these, this document or the study, was not disclosed to the  
13 defendant at any time, it's not on the report, there's no  
14 prior testimony about this kind of thing in the report.

15 MR. FRIEDMAN: Your Honor, his report goes to great  
16 lengths about his understanding of the high -- the high  
17 numbers of people who shop online, the fact they use payment  
18 cards, and this was a subject of extensive questioning --

19 THE COURT: But it's not even in there so you better  
20 show me where it is.

21 MR. FRIEDMAN: His, in his report is where he  
22 discusses at great length about understanding the amount of--

23 THE COURT: You're telling me what's there, tell me  
24 where it is.

25 MR. TODD: Objection, there's no report yet, your



1 Honor.

2 THE COURT: Pardon me?

3 MR. TODD: That I've seen.

4 THE COURT: Pardon me?

5 MR. TODD: There's no report being discussed yet,  
6 your Honor.

7 THE COURT: Well, everybody knows he wrote a report  
8 and you have a copy of it. There's no mystery about that, is  
9 there?

10 MR. TODD: Yes, but we don't have a report in --

11 THE COURT: I think it's been -- it's been referred  
12 to as Plaintiff's Exhibit 34 in this testimony in this  
13 courtroom this morning.

14 MR. TODD: Yes --

15 THE COURT: It may not be -- it may not be in  
16 evidence although the parties have agreed the expert reports  
17 should go in evidence, I know that agreement, but nobody  
18 seems to care about it because they never offer the report --  
19 we know what the report is. It's the report of July 6th,  
20 2006, and it's Plaintiff's Exhibit 34. If this subject was  
21 disclosed in the report, counsel for the plaintiffs, show me  
22 where it's disclosed.

23 THE WITNESS: At the second fully paragraph on Page  
24 3 which is P-340004 I discussed this general line of  
25 reasoning in the report --



1 THE COURT: Well, wait a minute, excuse me, I was  
2 asking counsel, not you, sir.

3 THE WITNESS: Sorry, I thought you were asking me.

4 MR. FRIEDMAN: Your Honor --

5 THE COURT: I used the term "counsel for the  
6 plaintiffs," please point it out to me. And I didn't even  
7 know you were speaking, I was -- I thought it was him.

8 MR. FRIEDMAN: Your Honor, on exhibit Plaintiff's  
9 Exhibit 34, Bates No. 4, there is a paragraph that starts  
10 with "I note the existence of the other surveys suggesting  
11 much higher rates of card usage." He then describes a series  
12 of surveys that focus on the extent to which children shop  
13 online and why that is relevant to his analysis of the extent  
14 of children who have access to a payment card.

15 MR. TODD: And defendant renews its objection,  
16 there's no disclosure of Celent or this company that's now  
17 being discussed.

18 THE COURT: I don't see Celent in there. The motion  
19 to strike is granted and you may use other surveys that were  
20 disclosed but you can't use that one, not in the report.

21 MR. FRIEDMAN: Okay.

22 BY MR. FRIEDMAN:

23 Q In your opinion, Professor Mann, is the extent to which  
24 children could shop online relevant to understanding the  
25 extent to which they have payment cards?



1 A Yes.

2 Q Can you speak generally why you believe it is relevant?

3 A Because almost all Internet retail transactions use  
4 payment cards.

5 MR. TODD: Objection, foundation.

6 THE COURT: Isn't this the paragraph that you talked  
7 about?

8 MR. FRIEDMAN: Yes, your Honor. The -- the last  
9 sentence on Page 4 says "Given the difficulty of shopping  
10 online without a payment card, any estimate that less than 40  
11 percent of teenagers have access to a payment card cannot be  
12 taken seriously."

13 MR. TODD: Objection.

14 MR. FRIEDMAN: And when one reads the paragraph,  
15 that is the culmination of reasoning that to understand  
16 payment card, to understand the extent to which children have  
17 access to a payment card it's important to understand the  
18 extent to which they shop online because the two numbers will  
19 tend to correlate.

20 MR. TODD: Objection, foundation, given is a  
21 speculation or an assumption.

22 THE COURT: Was this report issued and in hand by  
23 all parties at the time of his deposition?

24 MR. FRIEDMAN: Absolutely, your Honor.

25 THE COURT: The issue was disclosed before trial and





1 it's reported here, the next to last paragraph on Page 4 of  
2 Plaintiff's Exhibit. The general objection is overruled.  
3 That doesn't put the Celent, if that was -- study in. It's  
4 not what I'm saying. I'm saying that the paragraph just  
5 referred to discloses the issues and covers his opinion, he  
6 was available to be examined on it at his deposition so it's  
7 in the case, overruled.

8 MR. FRIEDMAN: Thank you, your Honor.

9 BY MR. FRIEDMAN:

10 Q Have you studied any information regarding the percentage  
11 of children that shop on the Internet?

12 A Yes.

13 Q Can you turn to the next exhibit on your binder,  
14 Plaintiff's Exhibit 17?

15 A Yes.

16 Q Do you recognize this document?

17 A Yes.

18 Q What do you recognize it as?

19 A This is a Pew report about activity by teenagers on the  
20 Internet.

21 Q What is Pew?

22 A Pew is a think tank that produces reports about various  
23 subjects, generally focused on class-based issues.

24 Q And does this study provide any information to you  
25 regarding the percent of children that shop on the Internet?



1 A Yes.

2 Q When was this study performed -- I'm sorry, when was the  
3 survey performed?

4 A The surveys were done in the fall of 2004, almost exactly  
5 two years ago.

6 Q And you said that there is information in the survey  
7 that's relevant to your understanding of the percent of  
8 children that shop online. Can you direct me to the portion  
9 of this survey that you're referring to?

10 A Yes, if you look at it's Page Roman six in the report  
11 which I guess is Bates number, it's P-170007.

12 Q What on this page in particular?

13 A Yes. The first panel at the top where it says what teens  
14 do online, if you go down to about the eighth question, one  
15 of the things that teens do online is they buy things online  
16 such as books, clothing and music.

17 Q And then what is the number next to that?

18 A The number there is 43 percent.

19 Q So what do you understand this to be saying?

20 A That the response to the survey 43 percent of the ones  
21 that were, of the 12 to 17 years old that responded that they  
22 used the Internet responded that they bought things online.

23 Q And what, does this survey tell you what percentage of 12  
24 to 17 year olds said that they used the Internet?

25 A Yes.



1 Q Where does it say that?

2 A That's on the cover page which is Page P-170002, the  
3 first bullet on that page.

4 Q Can you --

5 A It says 87 percent of U.S. teens aged 12 to 17 use the  
6 Internet, up from 73 percent in 2000.

7 Q And does the -- can you explain how the figure on Page 6  
8 which is that 43 percent of U.S. Internet users age 12 to 17  
9 buy things online, how that relates to the 87 percent figure  
10 which is the U.S. teens that shop online?

11 A It suggests --

12 Q Or that use the Internet.

13 A It suggests that the finding of the survey would be that  
14 37 percent at that time of the people age 12 to 17 shopped  
15 online.

16 Q Can you explain how you reached the 37 percent figure?

17 A Well, that's 43 percent times 87 percent.

18 Q And is this figure that from the Pew survey, that 37  
19 percent of U.S. teens age 12 to 17 shop online, is this  
20 relevant to your overall conclusion that 50 percent of all  
21 children have access to a payment card before they reach the  
22 age of 17?

23 A Yes.

24 Q How is it relevant?

25 A What I try and do is take the surveys and adjust them



1 from what the questions are that the people asked when they  
2 asked them to the question that you're asking now. And so  
3 there's several things about this survey that you'd have to  
4 take into account to form a reliable estimate about current  
5 activity compared to what was asked in this survey then.

6 Q What must you take into account?

7 A Well, the most obvious thing is that the survey was done  
8 two years ago and people use the Internet more now, a lot  
9 more now than they did two years ago.

10 Q So what result does the fact that this is two years old  
11 have?

12 A It suggests that the 37 percent number is probably lower  
13 than what you would get if you did a general -- a similar  
14 survey now.

15 Q Is there anything else about this Pew survey when you  
16 analyzed it that -- that affects your understanding or  
17 consideration of the 37 percent figure?

18 A Well, the second thing is, if you look at the question  
19 they asked, so this is back no P170007.

20 Q Okay.

21 A They asked if people bought things online such as books,  
22 clothing or music and that probably picks up most Internet  
23 shopping but especially for children there's a number of  
24 things people buy that there's a number of purchases that  
25 don't involve things and so people might be buying ring





1 tones, people might be buying access to content. There's a  
2 lot of purchases on the Internet --

3 MR. TODD: Objection, speculation.

4 THE WITNESS: There's a lot of purchases on the  
5 Internet--

6 THE COURT: When there's an objection please stop  
7 talking.

8 I was looking at the report.

9 MR. FRIEDMAN: Your Honor, if I may.

10 THE COURT: All right, just a minute, please. Yes.

11 MR. FRIEDMAN: Part of, yes, part of Professor  
12 Mann's scholarship is understanding surveys and using them to  
13 understand what they're telling him so then he could then  
14 extrapolate and draw his opinions or gain a greater  
15 understanding. And so this area of understanding survey  
16 methodology is part of his, it's part of his work, it's what  
17 he does. He's not a statistician but it's a central part of  
18 how he goes about his scholarship.

19 THE COURT: Your question is notable for not  
20 covering these items with the witness. The things you just  
21 said you've never got from the witness, this is your  
22 conclusion from working with him, I gather. But --

23 MR. FRIEDMAN: I'm happy to --

24 THE COURT: It's up to you. The objection was that  
25 it was speculation, any other major objection?



1           MR. TODD: Well, it's also foundation, speculation  
2 go sort of hand in hand.

3           THE COURT: Okay, the foundation you have to lay is  
4 whether the survey is efficacious. And I'm not going to go  
5 into how you do that, you ought to know what the law is on  
6 that, I've issued an order on it in this case. Then you  
7 might be able to move on. In the meantime the record should  
8 strike out that portion of the answer that -- well, let's  
9 strike out the question and the answer. If you want to have  
10 him interpreting surveys you're going to have to lay a  
11 foundation.

12 BY MR. FRIEDMAN:

13 Q Professor Mann, in your scholarship do you consider  
14 surveys?

15 A Yes.

16 Q And have you taken -- have you developed any  
17 understanding of survey methodologies.

18 Q Is understanding survey methodologies relevant to your  
19 scholarship?

20 A Yes.

21 Q how is that?

22 A A lot of work in the payment cards field is survey-based  
23 inquiries because that's one of the ways you can collect  
24 information about payment card use. And so to understand as  
25 an academic matter the value of a particular survey people



1 have to go and study the survey and study the results and  
2 figure out the value that can be attributed to them. And so  
3 one of the, you know, basic problems when I address surveys  
4 in my charging ahead book, for example, or in -- the charging  
5 ahead book is a principal place because you have to look at  
6 the surveys and you figure out things that are wrong with  
7 them because it's impossible that they're a perfect survey,  
8 that tell you whether the survey is likely to overreport or  
9 underreport with respect to the number that it has because  
10 people --

11 THE COURT: You found that out, did you say?

12 THE WITNESS: Well, you -- you have to analyze what  
13 the things are that the survey person is asking and compare  
14 them to the thing that you're trying to figure out. It's  
15 relatively uncommon that somebody will have gone out and done  
16 a sophisticated survey that matches precisely the question  
17 that interests you and so you have to figure out what they  
18 asked, what people are likely to have thought about what they  
19 asked and then compare that to what you're trying to  
20 understand.

21 And so the Pew people were not doing a survey about  
22 the share of children in 2006 that have access to general  
23 purpose payment cards. They did a survey in 2004 about  
24 people that buy things online and those are two distinct  
25 questions. And so as a scholar you would look at one of



1 those and try to figure out how it differs from the other.  
2 And that's what I'm -- I think that's what Mr. Friedman has  
3 asked me to explain.

4 THE COURT: Go right ahead.

5 MR. FRIEDMAN: Do you have an understanding of--

6 THE COURT: I'm not passing judgment on anything,  
7 I'm saying that ask your next question.

8 MR. FRIEDMAN: Yes, your Honor.

9 BY MR. FRIEDMAN:

10 Q Do you have an understanding or do you have an opinion as  
11 to whether the figures, the 37 percent figure is an accurate  
12 figure?

13 A Yes.

14 Q And what is that understanding based on?

15 A I think that it's based on my experience related to  
16 Internet commerce. It's based on my experience related to  
17 how Internet retailers work which is an area in which I have  
18 collected a lot of data and do a lot of research and it's  
19 based on my examination of the specifics of this particular  
20 report.

21 Q Can you describe any experiences you've had related to  
22 survey methodologies in particular that helped you to analyze  
23 the -- this survey in particular?

24 A Sure. When you -- the most common surveys that are  
25 relevant to me in my work are surveys people have done





1 related to -- you have very sophisticated surveys by people  
2 like the Institute for Survey Research that relate to the  
3 share, the family level, consumer financial activity and you  
4 have to try and work from those surveys to build reliable  
5 estimates of consumer financial activity on a nationwide  
6 basis since that's a fairly common problem for me to deal  
7 with because most of the data I use is not survey-based and I  
8 have to make it fit with the survey data and figure out what  
9 the surveys mean.

10 Q And how is your understanding of those surveys and those  
11 survey methodologies relevant to your analyzing the Pew study  
12 survey?

13 A Well, because I've had to spend a lot of time talking  
14 with people that are survey specialists or colleagues of mine  
15 to understand the relevance of the survey work that's been  
16 done in my field to my work which has used other methods of  
17 quantitative analysis.

18 Q Based on your understanding of survey methodology, I'm  
19 sorry, do you understand the survey methodology related to  
20 this question that's reflected on Page 6?

21 A Yes.

22 Q Based on your understanding of survey methodologies and  
23 this question do you have an opinion as to whether it is  
24 overreporting or underreporting the amount of children that  
25 actually shop online?



1 A Yes.

2 Q What is your opinion in that regard?

3 A I think it probably underreports the true number.

4 Q Why do you have that opinion?

5 A Because of the way the question's constructed. The  
6 question they're asking is whether people buy things online.

7 Q Okay. And I'm sorry, what about that question leads you  
8 to believe it's probably underreporting shopping online?

9 A If you study Internet retailing, as I do, and you look at  
10 the various things that are sold online, many of them are not  
11 things, many of them are intangible. For example, you might  
12 buy a ring tone, you might buy access to content, digital  
13 content of various kinds. And an ordinary person might say,  
14 well, that's not really a thing that I'm buying, you might  
15 buy a service.

16 MR. TODD: Objection about the ordinary person.

17 THE COURT: Overruled. He's explaining why his  
18 answer to the question. You can cross-examine him about  
19 that.

20 BY MR. FRIEDMAN:

21 Q You may continue.

22 A And so --

23 THE COURT: Wait a minute, ask another question.

24 The witness has a tendency, with all due respect, to answer  
25 more than you're asking him. So you have a job to do, you've



1 got to stop him and ask another question.

2 MR. FRIEDMAN: Okay.

3 THE COURT: You've got two reasons for that. One is  
4 structural, the other one is I'm a factfinder and I can't  
5 absorb, you ought to know personal abilities, human nature, I  
6 have to understand what he's saying. If you understand it,  
7 that's great but if I don't, you're wasting your time. So  
8 all counsel has a job to do there, we all share that task.  
9 We're either happy or not happy we don't have a jury but we  
10 don't. So that's the way it goes. But use your skill and  
11 your knowledge of his report and your trial preparation of  
12 the witness to make sure the material goes into some  
13 comprehensible bits, bites and chunks.

14 BY MR. FRIEDMAN:

15 Q You mentioned that there might be items or products or  
16 something purchased online that might not have been responded  
17 to when asked this question -- I'm sorry, that a child might  
18 not have considered when responding to this question, is that  
19 right?

20 A Yes.

21 MR. TODD: Objection, calls for speculation.

22 THE COURT: Overruled. Lay a foundation, he knows,  
23 he said yes, now what?

24 MR. FRIEDMAN: Okay.

25 BY MR. FRIEDMAN:



1 Q What types of products or material are you referring to  
2 in particular when you say they might not have been included?

3 A Intangibles.

4 Q Can you give an example of an intangible?

5 A A ring tone.

6 Q Do you know of any other examples of intangibles?

7 A Services.

8 Q Any others?

9 A Digital content.

10 MR. FRIEDMAN: Your Honor, at this point I'd like to  
11 move Plaintiff's Exhibit 17, the Pew study, into evidence.

12 THE COURT: Any objection?

13 MR. TODD: Yes, your Honor. We have only discussed  
14 a single question in the survey and there has been no  
15 foundation laid for the survey's overall methodology.

16 MR. FRIEDMAN: Your Honor, I think we've discussed  
17 two questions in the survey and have gone to great lengths to  
18 explain how this survey, including its methodology, relates  
19 to the opinion that Professor Mann is providing to that  
20 report.

21 THE COURT: The survey is 57 pages long and I have  
22 no idea how much of it you referred to with this witness.

23 MR. FRIEDMAN: I am, your Honor --

24 THE COURT: And as counsel said he's only referred  
25 to one type of analysis or item or however you want to call





1 it. I don't know what the rest of the report has to do with  
2 that particular issue that you had opinions from the witness  
3 on.

4 MR. FRIEDMAN: Yes, your Honor, I could ask the  
5 witness questions in that regard if you'd like. It's --

6 THE COURT: I don't like anything. There's an  
7 objection made that your offer is overbroad because this  
8 study hasn't been qualified by the witness or used by the  
9 witness in any depth at all, the defense says that you've  
10 only covered with the witness one area or some similar words,  
11 and thus this whole report offer is overbroad.

12 MR. FRIEDMAN: Your Honor, I'd like to --

13 THE COURT: So the objection is sustained for the  
14 time being.

15 MR. FRIEDMAN: Your Honor, I'd like to move into  
16 evidence the aspects of this report that -- I'm sorry, the  
17 study that Professor Mann has testified to. And he has  
18 referred in particular to Page, Bates stamped Page 2 and  
19 Bates stamped Page 6 -- I'm sorry -- Bates stamped Page 7.

20 MR. TODD: No objection to those pages, your Honor.

21 THE COURT: Pages 2 and 7 Bates stamp of Plaintiff's  
22 Exhibit No. 17 and as a gratuity I'll put in the cover page  
23 of the whole study so we know, so it's self-authenticating,  
24 that's Page 0001, are received in evidence.

25 (Bates stamped Pages 2 and 7, cover page of



1 Plaintiff's Exhibit 17 received in evidence.)

2 BY MR. FRIEDMAN:

3 Q Professor Mann, aside from the Pew study have you  
4 considered any other statistics or studies relating to the  
5 percent of children that shop online?

6 A Yes.

7 Q Can you turn to the next exhibit in your binder which is  
8 Exhibit 97, Plaintiff's exhibit 97?

9 A Yes.

10 Q And do you recognize this document?

11 A Yes.

12 Q What do you recognize it as?

13 A It's an Internet Retailer article, the report's a survey  
14 by Forester Research.

15 Q What is Internet Retailer?

16 A Internet Retailer is an information disseminator that's  
17 on the Internet and they are the leading source for  
18 information about Internet retailing. So I use them  
19 extensively in my research because they have databases about  
20 E-commerce websites overall.

21 Q Is there something in this article that's relevant to  
22 your consideration of the question of the percent of children  
23 who shop online?

24 A Yes.

25 Q What about this article is relevant to that question?



1 A It refers to a Forester Research study that is more  
2 recent than the Pew report and the Forester Research study  
3 suggests a higher share of children shopping online.

4 Q What is Forester Research?

5 A Forester Research is a proprietary consulting group  
6 that's well known for doing research related to Internet  
7 usage.

8 Q Have you -- have you read the Forester survey?

9 A No.

10 Q Is your understanding of the Forester survey and its  
11 results based on this Internet Retailer article?

12 A Yes.

13 Q And can you say -- can you read the part of this article  
14 that discusses the Forester survey's results on its analysis  
15 of the percent of children who shop online?

16 A Yes.

17 Q Okay. Where is that in this article?

18 A It's in the first paragraph.

19 Q And what percent does it provide?

20 A It says that 52 percent of teens under 18 have shopped  
21 online, based on a questionnaire administered in November of  
22 2005.

23 Q And do you have an opinion whether or not this percent  
24 accurately reports the actual percent of children who shop  
25 online?



1 A Well, it's my opinion, yes, I do.

2 Q What is your opinion in that regard?

3 A My opinion is that it probably understates it somewhat  
4 because it's a year ago and if you look at a survey two years  
5 ago and you get a number of roughly 37 percent and you look  
6 at a survey a year ago and you get a number of 52 percent,  
7 then it's my opinion if you took a similar survey today the  
8 number would be somewhat higher than 52 percent, although  
9 it's difficult to know exactly how high it would be.

10 MR. FRIEDMAN: Your Honor, at this point I'd like to  
11 move Plaintiff's Exhibit 97 into evidence, the Internet  
12 Retailer article.

13 MR. TODD: Objection, your Honor, it's hearsay, it's  
14 not the study itself and, you know, it may be reliance  
15 material but it's not independently admissible under any of  
16 the hearsay exceptions.

17 THE COURT: The objection is sustained in that the  
18 witness cannot ratify the bona fides of the survey other than  
19 his notion of the reputation of the Forester Research  
20 organization. There is no motion to strike out his testimony  
21 so the information is in the record but the Plaintiff's  
22 Exhibit 97 Bates stamped 001 is not received in evidence.  
23 The objection is sustained.

24 BY MR. FRIEDMAN:

25 Q You mentioned earlier that there were two bodies of





1 research that you have considered in reaching your overall  
2 conclusion of the percent of children who have access to  
3 payment cards. What was the second body of research?

4 A Well, you can try to do surveys that directly --

5 THE COURT: Excuse me, sir, could you answer the  
6 question? He's asked you what is --

7 THE WITNESS: Surveys that attempt to directly  
8 collect information about payment card use, payment card  
9 possession.

10 BY MR. FRIEDMAN:

11 Q So these are surveys that are different from those that  
12 consider the percent of children who shop online?

13 A Yes.

14 Q And have you actually reviewed surveys that ask this  
15 question, the percent of children who have access to a  
16 payment card?

17 A Yes.

18 Q What surveys have you reviewed?

19 A The only one with which I'm familiar is the Teenage  
20 Research Unlimited study.

21 Q Can you turn to the next page in your binder -- I'm  
22 sorry, next tab in your binder, it's marked No. 93?

23 A Yes.

24 Q Do you recognize this document?

25 A Yes.



1 Q What do you recognize it as?

2 A This is the spring 2006 results from the Teenage Research  
3 Unlimited survey.

4 Q Are you familiar with Teenage Research Unlimited?

5 A I was not familiar with them until I started to work on  
6 this case.

7 Q And what do you generally understand Teenage Research  
8 Survey Unlimited to be?

9 A I understand them to be a proprietary consulting group  
10 that produces reports about teenage economic activity.

11 Q And is there a part of this survey, Plaintiff's Exhibit  
12 93, that is relevant to your overall opinion that at least 50  
13 percent of all children will have access to a payment card at  
14 some point before they turn 17?

15 A Yes.

16 Q Which part of this survey?

17 A That would be Question D-4 which is on Page P-930010.

18 THE COURT: Let's save some time in objections back  
19 and forth, if you're going to use the survey you've got to  
20 qualify the survey through the witness or you can't use it.

21 MR. FRIEDMAN: Okay.

22 BY MR. FRIEDMAN:

23 Q Do you find this survey to provide useful data to you in  
24 reaching your opinion?

25 A Yes.



1 Q And is there information here that is reliable for you in  
2 reaching your opinion?

3 A Yes.

4 Q You understand, focusing now on Page 10, do you have an  
5 understanding of what is being asked -- I'm sorry -- what is  
6 Page 10?

7 A Page 10 is a tabulation of results from one of the  
8 questions that was asked in this survey in the spring of  
9 2006.

10 Q And do you have a general understanding of what the  
11 questions are that this is referring, that this is a  
12 tabulation of responses to?

13 A Based on the tabulation, yes.

14 Q What do you understand it to be tabulating?

15 A Well, they asked people of the list ages whether they  
16 have access to the products that are listed along the left  
17 side of this table.

18 Q Products being under the line, under the word "total"  
19 starting with savings account and checking account, is that  
20 what you're referring to?

21 A Yes.

22 Q Is this, is the data that's on Page 10 relevant in any  
23 way to your opinion on the percent of children who have  
24 access to a payment card?

25 A Yes.



1 Q How is that relevant?

2 A This survey provides information about the extent to  
3 which 16 year olds and people who are younger than 16 years  
4 old reported themselves as having access to these particular  
5 products.

6 MR. FRIEDMAN: Your Honor, before I go into the  
7 details of the survey I'd like at this point to move at least  
8 Page 10 into evidence.

9 THE COURT: Of P-93?

10 MR. FRIEDMAN: Yes, your Honor.

11 THE COURT: Any objection?

12 MR. TODD: Provided that plaintiff's don't also  
13 object to moving the actual question into evidence which is  
14 contained in Defendant's Exhibit 405, I believe, to which  
15 these answers are related.

16 THE COURT: Are you aware of that material, Counsel?

17 MR. FRIEDMAN: I am, your Honor.

18 THE COURT: And is that a quid pro quo that you're  
19 willing to agree to?

20 MR. FRIEDMAN: At this point I was not planning  
21 admitting the questions into evidence.

22 THE COURT: No, you don't have to. The suggestion  
23 is if the defense is going to waive objection to this page  
24 going in they want you to waive objection to the questions  
25 going in.





1 MR. FRIEDMAN: Oh, I'm sorry, I will not object to  
2 the questions going in, your Honor.

3 THE COURT: All right. Then Plaintiff's Exhibit 93,  
4 Page 0010 is received in evidence.

5 (Plaintiff's Exhibit 93, Page 0010, received in  
6 evidence.)

7 BY MR. FRIEDMAN:

8 Q On Page 10 does this provide a statistic for you of the  
9 percent of children who at the age of 16 have access to a  
10 payment card?

11 THE COURT: I'm sorry, but I didn't understand the  
12 word just before age 16, what are the operative words of your  
13 question?

14 MR. FRIEDMAN: I'm sorry, I'll rephrase it, your  
15 Honor.

16 BY MR. FRIEDMAN:

17 Q Page 10, is this relevant at all to your opinion that at  
18 least 50 percent of all children will have access to a  
19 payment card at some point before they reach the age of 17?

20 A Yes.

21 Q How is it relevant to that opinion?

22 A It provides, if you look at the numbers carefully,  
23 information about the share of responding 16 year olds that  
24 said that they had access to the listed products.

25 Q Can you explain to me where in here it tells you the



1 share of 16 year olds that have access to the listed  
2 products?

3 THE COURT: Referring to P-93, Page 10.

4 THE WITNESS: Right, yes, I can.

5 BY MR. FRIEDMAN:

6 Q Okay. Can you explain how that is?

7 A Yes, I can.

8 Q Please do so?

9 A I'm answering the questions you ask, see. It has columns  
10 for people who are 12 to 15, which is the second column, and  
11 then has a separate column for people who are 12 to 16.

12 Q Is that, the first column, the 12 to 15 column you're  
13 referring to is the second column, you said?

14 A Yes.

15 Q And then where is the 12 to 16 column?

16 A It's the fourth column.

17 Q Okay.

18 A So if you subtract the numbers in the 12 to 15 column  
19 from the numbers in the 12 to 16 column that tells you about  
20 16 year olds.

21 Q If you turn to your next exhibit, you'll see it's an  
22 exhibit that's a demonstrative, is that right?

23 A Yes.

24 Q Do you recognize this document?

25 A Yes.



1 Q What do you recognize it as?

2 A This is a demonstrative exhibit that you prepared based  
3 on a piece of paper that was a yellow pad that I wrote down  
4 what I was just describing to you because that's what this  
5 is.

6 Q And does this perform a computation?

7 A Yes.

8 Q What does it --

9 A This shows the computation I was just describing.

10 THE COURT: Has this been identified as an exhibit?

11 MR. FRIEDMAN: Your Honor, it was sent over --

12 THE COURT: I wasn't paying attention, I was writing  
13 my notes. I'm sorry.

14 MR. FRIEDMAN: It was sent over to the Department of  
15 Justice last Friday after we thought it in the best, prudent  
16 to lay this out in an understandable way.

17 THE COURT: My question is different. I said has  
18 that been identified as an exhibit in the case so we can make  
19 a record of it?

20 MR. FRIEDMAN: Right. I don't believe so at this  
21 point.

22 THE COURT: Okay. Continue the questioning. You  
23 may continue your questioning.

24 BY MR. FRIEDMAN:

25 Q Does this demonstrative perform a computation?



1 A Yes.

2 Q And what is it computing?

3 A What I did is I looked at the results from Question D-4  
4 and so I tried to figure out --

5 Q And D-4 is on?

6 A Page P-930010. And I tried to figure out how many 16  
7 year olds reported that they had a debit card, which is the  
8 third response, a credit card, which is the seventh response,  
9 access to a parent's credit card, which is the eighth  
10 response.

11 Q Any others, Professor Mann?

12 A And access to a parent's debit card which is the tenth  
13 response.

14 Q And how many 16 year olds did you determine, based on  
15 this survey, have access to a debit card in their own name?

16 A So what the demonstrative exhibit does is it just  
17 subtracts from those lines, the 12 to 15 column, from the 12  
18 to 16 column and that tells you what the 16 year olds  
19 specifically said. And it tells you that 83 16 year olds  
20 reported themselves having access to one of those products.

21 THE COURT: I'll hear the objection.

22 MR. TODD: Objection, speculation, we don't know  
23 that they -- that it's mutually exclusive that a 16 year old  
24 has a debit card, that one 16 year old with a debit card  
25 isn't also reporting access to a parent's credit card. So





1 objection, speculation as to the sum 83.

2 THE COURT: Before I rule on that let me begin to  
3 understand these numbers. These are actual persons who were  
4 interviewed or do they have some other significance, can you  
5 tell that, Professor, from the survey material you have?

6 THE WITNESS: Can I answer your -- you're asking me  
7 a question I can answer?

8 THE COURT: Yes, I'm asking you a question.

9 THE WITNESS: Okay. Yes, these are, this is --  
10 they-- these are telephone interviews and these are the  
11 people that responded.

12 THE COURT: I wanted to know what the numbers  
13 represented.

14 THE WITNESS: Yes, these are individual people,  
15 these are not percentages. So on the top line here, 70  
16 individuals aged 12 to 16 said yes to that and 35 12 to 15  
17 year olds said yes to that.

18 THE COURT: All right, the motion to strike or  
19 objection is denied or overruled and the subject will be  
20 taken up on cross-examination.

21 THE WITNESS: And so --

22 THE COURT: Wait for a question.

23 BY MR. FRIEDMAN:

24 Q Yes. On Page P-930010, does this page tell you how many  
25 16 year olds reported access to a debit card in their own



1 name?

2 A Yes.

3 Q And what number is that?

4 A I've got a lot of very small things in front of me. 35.

5 Q Does it tell you the number of 16 year olds who reported  
6 having a credit card in their own name?

7 A 13.

8 Q Does it tell you the number of 16 year olds who reported  
9 having access to a parent's credit card in their own name?

10 A Yes.

11 Q I'm sorry, a parent's credit card.

12 A Yes.

13 Q Does it tell you the number of 16 year olds who reported  
14 having access to a parent's debit card?

15 A Yes.

16 Q And what was the number that had access to a parent's  
17 credit card?

18 A 20.

19 Q What was the number that had access to a parent's debit  
20 card?

21 A 15.

22 Q So based on this Page 10 of the Teenage Research survey  
23 what number of 16 year olds had access to a credit or debit  
24 card, either in their own name or in their parents' name?

25 MR. TODD: Same objection for the record, your



1 Honor, it calls for speculation.

2 THE COURT: Overruled. Take it up on cross, if  
3 you'd like, sir.

4 THE WITNESS: Those numbers add up to 83.

5 BY MR. FRIEDMAN:

6 Q And do you know the total number of 16 year olds who  
7 responded to the question?

8 A 224.

9 Q How do you know that number?

10 A It's a similar calculation, you can look at the total  
11 people they asked questions of at the top and you can look at  
12 the total that didn't answer at the bottom.

13 Q Can you --

14 MR. TODD: Same objection, for the record, your  
15 Honor, it calls for speculation.

16 THE COURT: Overruled.

17 BY MR. FRIEDMAN:

18 Q Where does this indicate the total number of 16 year olds  
19 who respond-- who were asked the question?

20 A It's the difference between the total number of 12 to 16  
21 year olds, which is the fourth number on the total line,  
22 1,260, and the total number of 12 to 15 year olds on the  
23 total line which is 1,001. And so the different is 259.

24 Q 259 16 year olds were asked the questions?

25 A Yes.



1 Q Okay. Does this tell you the number of 16 year olds who  
2 did not respond?

3 A You can do the same thing, you can go down to the no  
4 answer line. And on the no answer line the fourth item is  
5 283 for the 12 to 16 year olds. And it's 248 for the 12 to  
6 15 year olds.

7 Q And what is the difference of those two numbers, do you  
8 know?

9 A The difference of those two numbers is 35.

10 MR. TODD: Same objection, for the record, calls for  
11 speculation.

12 THE COURT: Overruled. It's his calculation subject  
13 to weight of the evidence and cross-examination.

14 BY MR. FRIEDMAN:

15 Q So based on those figures can you tell the number of 16  
16 year olds that responded to this question?

17 A Yes.

18 Q And what is that number?

19 A 224.

20 MR. TODD: Same objection, for the record.

21 THE COURT: Overruled. Overruled.

22 BY MR. FRIEDMAN:

23 Q Based on the number of 16 year olds who, based on that  
24 survey, have reported having access to a credit card and  
25 debit card in their own name or in their parents' name and





1 then the total number of 16 year olds that responded to the  
2 question, do you know what percentage of 16 year olds overall  
3 had access to a payment card, based on this survey?

4 A Yes.

5 Q What is that percentage?

6 A 37.

7 Q How did you reach that percentage?

8 A It's 83 divided by 224.

9 Q How does that figure, that 37 percent figure we just went  
10 through, relate to your conclusion that at least 50 percent  
11 of all children will have access to a payment card at some  
12 point before they turn 17?

13 A Well, I think that's the best survey of which I'm aware  
14 that gives us any information about the extent to which  
15 people report having the listed products.

16 Q Do you think that that 37 percent number was  
17 overreporting or underreporting the actual amount of 16 year  
18 olds who have access to a payment card?

19 A I think that provides a pretty solid floor but that it's  
20 underreporting.

21 MR. TODD: Objection, calls for speculation.

22 THE COURT: Overruled.

23 BY MR. FRIEDMAN:

24 Q Why do you believe it is underreporting the actual  
25 percentage?



1 THE COURT: I'm confused, he said it was a solid  
2 base, doesn't sound to me like overreporting --

3 MR. FRIEDMAN: Okay.

4 THE COURT: -- or underreporting, unless I didn't  
5 hear something, which is possible.

6 BY MR. FRIEDMAN:

7 Q Do you -- in your opinion is this 37 percent  
8 underreporting or overreporting the actual amount of 16 year  
9 olds that have access to a payment card?

10 A Yes.

11 Q Okay. Do you think it's overreporting or underreporting?

12 A I think it's underreporting.

13 Q Why do you think it's underreporting?

14 A Generally, two separate reasons. One would be because  
15 people would have general payment card products that wouldn't  
16 be given by these questions.

17 MR. TODD: Objection, calls for speculation.

18 THE COURT: Overruled.

19 BY MR. FRIEDMAN:

20 Q And then if you could tell me, you said there are two  
21 reasons, if you state that briefly, go through each one.

22 A And the second one would be because people might have one  
23 of these products and would be unlikely to respond correctly  
24 on the survey.

25 Q Focusing on the first reason, why do you think that



1 people with prepaid cards might not have included that in  
2 their response to these questions?

3 A Because in common parlance a prepaid card wouldn't be  
4 regarded as either a credit card or a debit card. And so if  
5 you asked children do you have a credit card or a debit card,  
6 if the only card they have is a prepaid card, some  
7 substantial number of them are likely to say no because it's  
8 the right answer.

9 MR. TODD: Objection, calls for speculation. The  
10 witness has not been demonstrated as an expert on a child's  
11 mind.

12 MR. FRIEDMAN: Your Honor, the witness -- we've gone  
13 to great lengths to describe the witness' expertise in the  
14 area of payment cards, payment card companies' business  
15 models and who they are attractive to, why they are  
16 attractive and what they do. And as part of that, part of  
17 that he has -- he does have expertise in how they are used  
18 and how they're considered by their owners.

19 MR. TODD: I'm sorry but there's been no testimony  
20 to lay a foundation for that, your Honor.

21 THE COURT: The objection is overruled. Received  
22 for the value of it as the factfinder looks over the case.  
23 The witness is qualified to make this analysis, the weight to  
24 be given it I'm certainly not sure of by any means, so it's  
25 received in evidence. Overruled. Subject to cross-



1 examination, of course.

2 BY MR. FRIEDMAN:

3 Q Why do you think that children might not have included  
4 prepaid cards in responding to questions of whether they had  
5 debit or credit cards?

6 THE COURT: Isn't that what he just answered?

7 MR. FRIEDMAN: Yes, your Honor, but I wanted to give  
8 him the opportunity to explain why that's his opinion.

9 THE COURT: Then why don't you ask him to explain  
10 his last answer.

11 MR. FRIEDMAN: Okay.

12 THE COURT: You're going back over the same thing  
13 again.

14 MR. FRIEDMAN: Your Honor, I did not intend to, I  
15 just--

16 THE COURT: Sounded like you were.

17 MR. FRIEDMAN: I didn't intend to repeat.

18 BY MR. FRIEDMAN:

19 Q Have prepaid cards been in existence for a long time?

20 A Yes.

21 Q At what point -- can you describe what the first prepaid  
22 card was, to your knowledge?

23 A The prepaid card product is, depending on how you define  
24 it, has been around for a long time because you could  
25 characterize the old subway cards or copier cards that had





1 magnetic stripes as a type of prepaid card but those were not  
2 as commercially significant as the products we see now.

3 Q And the products we see now, you're referring to the  
4 types of prepaid cards you discussed earlier?

5 A Yes.

6 Q And about how long ago did they become prominent?

7 A About five years.

8 Q What happened about five years ago?

9 A About five years ago is when Mastercard introduced its  
10 general purpose prepaid card product in the market. It's  
11 grown very rapidly ever since then.

12 Q Do you have a sense as to why these prepaid cards have  
13 grown rapidly in the market?

14 A Because they are attractive to niches of customers that  
15 are not thoroughly served by the existing products.

16 Q You mentioned earlier the Netspend card. Can you  
17 describe again what the Netspend card is and then we can ask  
18 a few questions about it.

19 A A Netspend card is a reloadable, prepaid card that is  
20 designed for use broadly on the Internet.

21 Q Do you know how someone can get and activate a Netspend  
22 card?

23 A Yes.

24 Q How can someone obtain an actual Netspend card?

25 A they have to go to a retailer that sells them such as a



1 grocery store or a convenience store.

2 Q And what must they do at that retailer to obtain the  
3 card?

4 A They have to give the retailer cash.

5 Q Do they have to provide the retailer with any money?

6 A Yes.

7 Q I'm sorry, do they have to provide the retailer with any  
8 information?

9 A No.

10 Q Does the retailer check their age?

11 A No.

12 MR. TODD: Objection, foundation.

13 THE COURT: Sustain the question, the answer is  
14 stricken.

15 BY MR. FRIEDMAN:

16 Q Do you know how someone can get and activate a Netspend  
17 card?

18 A Yes.

19 Q How do you know that?

20 A I have done it.

21 Q You have actually gone and gotten a Netspend card?

22 A Yes.

23 Q Okay. How can someone obtain the actual Netspend card?

24 A They have to go to a retailer that sells them, such as a  
25 grocery store or a convenience store.



1 Q What must they do at that retailer to obtain the card?

2 A They have to give the retailer cash.

3 Q Do they have to provide the retailer with any money?

4 A Yes.

5 Q I'm sorry. Do they have to provide the retailer with any  
6 information?

7 A No.

8 Q Does the retailer check their age?

9 A No.

10 MR. TODD: Objection, foundation.

11 THE COURT: Sustained. The question and the answer  
12 are stricken.

13 BY MR. FRIEDMAN:

14 Q Do you know how someone can get and activate a Netspend  
15 card?

16 A Yes.

17 Q How do you know that?

18 A I have done it.

19 Q You have actually gone and gotten a Netspend card?

20 A Yes.

21 Q Okay. How can someone obtain the actual Netspend card?

22 A They have to go to a convenience store or a grocery store  
23 and purchase it.

24 THE COURT: Counsel, you can't prove the vast array  
25 people that buy a Netspend card from this one experience. He



1 can testify to his experience --

2 MR. FRIEDMAN: Okay.

3 THE COURT: -- but that doesn't cover the thousands  
4 of people that do it or whatever they do.

5 BY MR. FRIEDMAN:

6 Q Aside from obtaining your own Netspend credit card, have  
7 you done any research or study to understand how Netspend  
8 cards are generally acquired?

9 A Yes. And I assume you mean a Netspend prepaid card --

10 Q Yes.

11 A -- I don't think they have a credit card product.

12 Q Yes, I'm referring to the Netspend prepaid card.

13 A Yes. I mean, they're a common topic in the industry  
14 press because it's a very successful product and so people  
15 write about it frequently --

16 MR. TODD: Objection. This supposed study is beyond  
17 the scope of the expert's rebuttal report, it was not  
18 disclosed in the rebuttal report.

19 THE COURT: Well, sir?

20 MR. FRIEDMAN: Your Honor, I'm asking him generally  
21 his under -- what his understanding of how Netspend cards are  
22 obtained --

23 THE COURT: I understand what you're asking him; is  
24 it in the report or isn't it?

25 MR. FRIEDMAN: The specific study he's -- he just





1 referred to, I don't believe it is.

2 THE COURT: It might be in a table or it might be in  
3 the narrative.

4 (Pause.)

5 THE COURT: You're welcome to ask the witness as  
6 well.

7 BY MR. FRIEDMAN:

8 Q Professor Mann, do you see in your report where you refer  
9 to that specific study?

10 A Yes.

11 Q Okay. Where is that here?

12 A I discuss this question on P-34-0006, the third full  
13 paragraph is a section about prepaid cards.

14 Q Yes?

15 A And what I characterize as, "The most salient  
16 characteristic of the most success" --

17 THE COURT: Excuse me, what paragraph?

18 THE WITNESS: The third --

19 THE COURT: Don't read it into evidence yet, just  
20 point it out to me.

21 THE WITNESS: The third full paragraph on Page  
22 P-34-0006, the third sentence.

23 (Pause.)

24 MR. TODD: Objection, your Honor, there's no  
25 reference to any study.



1 (Pause.)

2 THE COURT: Well, there is information from which  
3 one could infer the process by which these cards are involved  
4 in the marketplace and the Netspend card is specifically  
5 referred to.

6 MR. TODD: Yes, your Honor, but it's mere net  
7 opinion without this foundation, the supposed study that  
8 we're now trying to lay a foundation for.

9 THE COURT: I'm sorry, but I don't know that he's  
10 referring to a study, I didn't hear any reference to a study;  
11 was there?

12 MR. TODD: Your Honor, if I'm confused --

13 THE COURT: We don't have our -- we don't have  
14 our --

15 MR. FRIEDMAN: Yes, I don't believe so, your Honor.

16 THE COURT: -- daily copy.

17 MR. TODD: I'm sorry, your Honor, but we had  
18 testimony that he had personal knowledge of how he purchased  
19 a card, and then I objected on foundation grounds, and we  
20 were -- and Counsel was asking, do you have any other way of  
21 knowing this information, and that's where he said he had  
22 done the study.

23 THE COURT: Let's -- let's strike the question and  
24 the answer and start over, will you please? After his report  
25 of his own personal experience, which I said is admissible,



1 start at that point, would you, please?

2 BY MR. FRIEDMAN:

3 Q Aside from your personal experience, do you have any  
4 other -- have you had any other experiences that help you  
5 understand how Netspend prepaid cards can be obtained?

6 A Yes.

7 Q And what are those experiences?

8 A They're a common subject in the industry press because  
9 they're a very successful product.

10 Q And have you read at all generally about how Netspend  
11 cards can be obtained?

12 A Yes.

13 Q How do you understand that Netspend cards can be  
14 obtained?

15 A It's my opinion, based on the discussion in the industry,  
16 that one of the key attributes of the Netspend card is the  
17 ability for them to be obtained and used anonymously.

18 MR. TODD: Objection, foundation.

19 THE COURT: Overruled.

20 BY MR. FRIEDMAN:

21 Q And why is that that they can be used anonymously?

22 A Because Netspend has designed the product that way and,  
23 in my opinion, it satisfies an important market niche, as  
24 evidenced by the fact that the product is successful.

25 Q How does a person first get a Netspend prepaid card?



1 A They have to go and buy the physical object.

2 Q From where?

3 A The objects are distributed widely at retailers in the  
4 areas where they have a substantial market presence.

5 Q And what must they provide to the retailer in order to  
6 get the Netspend card?

7 A Cash.

8 Q Do they need to provide any information?

9 A No.

10 Q Do they --

11 MR. TODD: Objection, foundation.

12 THE COURT: Overruled.

13 BY MR. FRIEDMAN:

14 Q Do the retailers check their age before selling them the  
15 Netspend card?

16 A No.

17 Q And then does the card then have to be activated?

18 A Yes.

19 Q How does one activate the Netspend card?

20 A It can be activated either by calling an 800 number or by  
21 going to a Website.

22 Q And do these Netspend cards have a Mastercard or Visa  
23 logo on them?

24 A Yes.

25 Q And, once they -- you said they go to a Website or call a





1 number, what information, if any, must be provided in order  
2 to activate the card?

3 A When they go to the Website, because it's a reloadable  
4 card, it needs to comply with the Patriot Act.

5 Q And so what effect does that have?

6 A And, because it needs to comply with the Patriot Act,  
7 they need to collect some identifying information about the  
8 card holder.

9 Q What type of information?

10 A Ordinarily, they collect information such as a date of  
11 birth and a Social Security number.

12 Q Is there any way for Netspend to know if the person is  
13 providing it with accurate information about who they are?

14 A No.

15 Q At any point is there any face-to-face verification where  
16 Netspend can after the fact verify that the information being  
17 provided was accurate?

18 A No.

19 Q Does the person who is providing the information have to  
20 be a particular age?

21 A No.

22 Q Do you have an understanding as to whether Netspend would  
23 activate a card for someone under the age of 17?

24 A Yes.

25 Q What is your understanding of that?



1 A It's my opinion that they would do that frequently.

2 MR. TODD: Objection, foundation.

3 THE COURT: Objection sustained. Lay a foundation.

4 BY MR. FRIEDMAN:

5 Q Do you have an opinion as to whether Netspend would  
6 activate a card for someone under the age of 17?

7 A Yes.

8 Q How do you have that opinion?

9 A Because one of the most prominent aspects of their  
10 marketing and of the press about them is their focus on  
11 children as a target audience.

12 Q How do you understand that to be their focus, their  
13 marketing focus?

14 A Netspend has got a lot of public -- of private equity  
15 financing and, in connection with that, the original focus of  
16 the firm was plainly to be a prepaid card that would be  
17 directed at children. They have spread out more broadly in  
18 recent years --

19 THE COURT: Could you back away from the microphone  
20 a little bit? We're getting a little extra --

21 THE WITNESS: They have spread out their product  
22 line in recent years, but that's always been the focus and  
23 the marketing that they have done is fairly clearly directed  
24 at children.

25 MR. TODD: Objection, foundation.



1           THE COURT: He isn't telling us how he knows all  
2 this stuff. There's some basic methodology, Counsel, for the  
3 plaintiff, so --

4           MR. TODD: Yes, and he's --

5           THE COURT: -- objection sustained.

6           MR. FRIEDMAN: I'm sorry, sustained, your Honor?

7 Okay.

8           THE COURT: I sustained the objection. What I said  
9 was, he hasn't shown how he knows anything about their  
10 marketing tactics or the reliability of the information he's  
11 relying -- he's apparently relying on. I have no doubt he  
12 believes it's important and reliable, but he has to show that  
13 in this courtroom.

14 BY MR. FRIEDMAN:

15 Q Are you familiar with Netspend's marketing?

16 A Yes.

17 Q How are you familiar with that marketing?

18 A Because it's widely reported in the press and because I  
19 experience the marketing frequently. The company is based in  
20 Austin and so they advertise particularly heavily in Austin,  
21 although they have a large national and now international  
22 presence. The main marketing thing they have done recently  
23 is they have hired Vince Young as a spokesman and he appears  
24 places and makes -- you know, advertises on behalf of  
25 Netspend, and he's a person who's of particular marketing



1 value to children.

2 Q Why do you believe that, that he's a person of particular  
3 marketing value to children?

4 A Because --

5 THE COURT: Who is the person again?

6 THE WITNESS: His name is Vince Young, he's a  
7 successful football player in Texas and he grew up in a very  
8 im --

9 THE COURT: There's a lot of those down there.

10 THE WITNESS: There are, but he's -- depending on  
11 your perspective, he's the most successful, in my lifetime at  
12 least. He grew up in an impoverished neighborhood in Houston  
13 and had a very difficult childhood, and he has succeeded and  
14 he's now extremely wealthy and extremely able and has  
15 overcome a lot, and that makes him somebody that youth of all  
16 races in the state and the area and the country look up to  
17 him, I think, and they pay him a lot of money to be their  
18 spokesperson.

19 MR. TODD: Motion to strike the reference to Vince  
20 Young appealing to youth, your Honor, there's no foundation  
21 for that.

22 THE COURT: I couldn't understand the last --

23 MR. TODD: I said, move to strike the witness'  
24 statement that Vince Young appeals to youth, there's no  
25 foundation for that statement -- and the larger point, your





1 Honor, there's no -- this is not a foundation for that they  
2 market their cards to minors.

3 MR. FRIEDMAN: Your Honor --

4 THE COURT: Well, someone might logically reach that  
5 conclusion if the appealing of the witness to youth -- if the  
6 foundation were laid for his knowledge of how Vince Young  
7 behaves, what he does, and he's given some conclusions, I  
8 have no idea where he got the information. So, the -- we'll  
9 strike out the references to what Mr. Young has done other  
10 than I don't hear any objection to the fact that he's  
11 participating in their marketing scheme somehow, that the  
12 defendant has not objected to. So, after that you may  
13 proceed.

14 BY MR. FRIEDMAN:

15 Q Do you know whether one way or another Vince Young would  
16 assist in the marketing to minors or to children?

17 A Yes.

18 Q And do you believe it would assist in the marketing to  
19 children?

20 A Yes.

21 Q Why -- I'm sorry, how do you know whether or not it would  
22 assist in the marketing to children?

23 MR. TODD: Objection, your Honor, this is far beyond  
24 the witness' expertise, unless he's here as an expert --

25 THE COURT: I don't know whether it's in his report



1 either.

2 MR. FRIEDMAN: Your Honor, we have --

3 THE COURT: I assume he lives in Texas and watches  
4 television and reads the newspaper and like everybody else,  
5 but nobody is asking him those questions.

6 MR. FRIEDMAN: Okay.

7 THE COURT: The objection is sustained.

8 MR. FRIEDMAN: Yes, your Honor.

9 BY MR. FRIEDMAN:

10 Q Have you done any analysis of Netspend's marketing or  
11 business model?

12 A Yes.

13 Q What have you done to study Netspend's marketing or  
14 business model?

15 A I have followed the prominent prepaid card products for  
16 the last few years because it's a rapidly growing market and  
17 something I am trying to write about as I update my case  
18 books, and so I try as much as I can to follow all press and  
19 industry literature about anything related to prepaid card  
20 products so that I can understand the niches in which they  
21 are succeeding and those in which they are not succeeding  
22 and --

23 Q As part of that research, have you studied at all  
24 Netspend in particular, it's business models and marketing  
25 techniques?



1 A Yes. One of the most common topics in the marketing  
2 literature which frequently appears in places like Cards  
3 International is the extent to which people have been able to  
4 design products that are actually attractive and can be  
5 gotten into the hands of children.

6 MR. TODD: Move to strike, can be gotten into the  
7 hands of children, no foundation.

8 THE COURT: Overruled.

9 BY MR. FRIEDMAN:

10 Q And have you studied or analyzed in particular whether  
11 Netspend's marketing is targeted in any way at children?

12 A That literature frequently -- yes.

13 Q What have you studied on that topic?

14 A The general perspective of the literature is to contrast  
15 products like the Visa Bucks card, which has not had a take-  
16 up among children, because it is targeted at getting parents  
17 to want to use the card, with the Netspend card, which has  
18 been successful, and in the literature this is attributed to  
19 the fact that it is appealed directly to children as opposed  
20 to appealing through parents.

21 MR. TODD: Motion to -- move to strike, your Honor,  
22 there's no disclosure of the literature in the court.

23 THE COURT: Sustained.

24 BY MR. FRIEDMAN:

25 Q Where do you live, Professor Mann?



1 A I live in Texas.

2 Q And are you familiar with Vince Young?

3 A Yes.

4 Q Who is Vince Young?

5 A Vince Young is a person who used to play football at the  
6 University of Texas.

7 Q Does Vince Young have any role in connection with  
8 Netspend?

9 A Yes.

10 Q What is that role?

11 A He is a spokesperson for Netspend.

12 MR. TODD: Objection, relevance.

13 THE COURT: Overruled. We're going to get this  
14 testimony finished some time and we'll deal with the weight  
15 of the evidence. And you'll cross-examine him and, after you  
16 cross-examine him, if you find out something is -- in your  
17 judgment needs to be stricken, you'll move to strike it at  
18 the time.

19 MR. TODD: Yes, your Honor.

20 THE COURT: Thank you. We're going to go another  
21 five minutes and then -- I forgot to tell those assembled,  
22 and I apologize, that we're having a Board of Judges meeting,  
23 I'm going to recess from quarter to 1:00 until 2:00 o'clock.

24 BY MR. FRIEDMAN:

25 Q Did you finish your answer of Vince Young's role, if any,





1 in connection with Netspend?

2 THE COURT: First of all, he lives in Texas and he  
3 knows the role; how does he know the role? I mean, you might  
4 ask him that.

5 MR. FRIEDMAN: I will ask him that.

6 BY MR. FRIEDMAN:

7 Q How do you know what Vince Young's role is in connection  
8 with the Netspend prepaid card?

9 A Because he appears on television, he appears on  
10 billboards, and it's discussed in articles in the Austin  
11 American Statesman.

12 THE COURT: Does the word notorious apply to that  
13 involvement?

14 THE WITNESS: I think it would, your Honor.

15 THE COURT: Okay.

16 BY MR. FRIEDMAN:

17 Q Is this fact that Vince Young is a promoter of the  
18 product, does this in any way affect your opinion as to  
19 whether or not Netspend is targeting minors?

20 A It does affect my opinion.

21 Q In what way?

22 A It affects my opinion because I think that selection of  
23 him as a spokesperson is more likely to reflect an effort to  
24 target children than it is to target older segments of the  
25 populace like parents.



1 Q And why do you think that is the case?

2 A Because I think there are more children that might like  
3 to model their financial behavior on Vincent Young than there  
4 are adults.

5 MR. TODD: Same objection, for the record, your  
6 Honor.

7 THE COURT: Overruled.

8 BY MR. FRIEDMAN:

9 Q In your opinion, would Netspend activate a card for  
10 someone under the age of 17?

11 A Yes.

12 Q And what is that opinion based on?

13 A That's based on the prominence within their general  
14 business model of making a product that's attractive to  
15 children.

16 Q Would it change your opinion if Netspend had a formal  
17 written policy saying that they will not issue cards to  
18 individuals under the age of 17?

19 A No.

20 Q Why would that not change your opinion?

21 A Because I think those policies are common in the payment  
22 card industry and they're common in the payment card industry  
23 because of the increasing recognition that credit cards are  
24 being issued to children and the concern that this is  
25 something that as a society we should not accept, and so



1 payment card providers don't brag about the extent to which  
2 they do this.

3 Q Why is it that you think that, even if there was a  
4 written policy, that would not change your opinion that  
5 Netspend activates cards for individuals under the age of 17?

6 A Because there is nothing in the process by which the  
7 cards are issued and activated that would stop children from  
8 acquiring them.

9 Q Are there any laws that prevent a child from getting a  
10 prepaid card?

11 A No.

12 Q To the age-of-majority laws prevent the child from  
13 obtaining a prepaid card?

14 A No.

15 Q Why not?

16 A Age-of-majority laws typically set out a class of  
17 contractual arrangements that can't be enforced against the  
18 child, but there's nothing in a prepaid card transaction that  
19 needs to be enforced against the child, the child gives the  
20 money in advance and then later on the child spends it; when  
21 they spend it, it's deducted from the account, the issuer  
22 doesn't have to sue the child to collect the money after it's  
23 spent. So it's very different from a credit card, for  
24 example.

25 Q Well, do age-of-majority laws prevent a credit card



1 company from issuing a credit card to minors?

2 A No.

3 Q And why is that?

4 A Because they simply make the obligations difficult to  
5 enforce, which is -- that's distinct from saying you can't  
6 actually do it, it just says, if you do it, you might have a  
7 hard time forcing the children to pay.

8 Q Does the Patriot Act prevent issuers from issuing prepaid  
9 cards to children?

10 A No.

11 Q Why not?

12 A The Patriot Act requires people who provide certain types  
13 of financial services to collect information so that the  
14 Government will have a way to identify the people that are  
15 getting certain types of financial services, and the purpose  
16 of this is to make sure that it's difficult to provide  
17 financial services to terrorists and the like.

18 Q And there's nothing in the Patriot Act that would  
19 actually prevent them from issuing these cards to minors?

20 A Right.

21 THE COURT: We're going to take our recess that I  
22 announced a few minutes ago, please.

23 Court is in recess. We're off the record. Counsel  
24 are excused until 2:00 o'clock.

25 (Court in recess; 12:46 to 2:00 o'clock p.m.)





1 THE COURT: Welcome back, everyone.

2 ALL COUNSEL: Good afternoon, your Honor.

3 THE COURT: Sorry about the smell in here; I'm not  
4 smelling it very much, but I'm sorry you are. Somebody's  
5 laptop is burning up, I guess.

6 (Laughter.)

7 THE COURT: Back to work we go. Is there any more  
8 direct testimony?

9 MR. FRIEDMAN: Yes, your Honor.

10 THE COURT: You may continue.

11 BY MR. FRIEDMAN:

12 Q You mentioned earlier that there were two reasons that  
13 the teenage research survey understates the number of  
14 children that have access to a payment card, is that right?

15 A Yes.

16 Q And can you now describe what the second reason is?

17 A There's some reason to expect that some people who  
18 actually have one of the listed products would still answer  
19 no to the question because they wouldn't want to acknowledge  
20 the behavior.

21 Q And why do you believe that to be a possibility?

22 A It's a common problem in surveys that ask questions about  
23 what sociologists call stigmatizing behavior, that if you ask  
24 people survey questions about behavior sometimes they won't  
25 admit it. So, if you asked teenagers how many of them smoked



1 cigarettes, the number you would get would probably  
2 understate the true number significantly.

3 Q And what about the questions and answers on Page 10 of  
4 the research survey is stigmatizing?

5 A Well, the problem is that a number of the reasons why --  
6 or if I could say it differently, a number of the ways in  
7 which children would be likely to get payment cards are not  
8 ways that they would readily acknowledge to their parents,  
9 are not things that they're doing with their parents' consent  
10 or knowledge and, to the extent that's true, they might not  
11 admit it when they're asked about it on a survey.

12 Q What ways might they get it without the consent or  
13 permission of their parents?

14 A Well, the simplest way would be to just submit a false  
15 application and so to submit an application for a credit card  
16 claiming to be an adult when they're not secretly.

17 Q Do you have reason to believe that this actually occurs,  
18 there are false applications?

19 A Yes.

20 Q How do you have that understanding?

21 A It's commonly discussed in the press about credit cards,  
22 which suggests that it happens anecdotally sometimes; it's  
23 hard to know exactly how often it happens, but it surely  
24 happens occasionally.

25 Q Are there any other reasons why you think children might



1 have access to payment cards and would not acknowledge that  
2 fact in response to a survey such as this?

3 A Well, another possibility is that they will have stolen  
4 the card or the card information, as the case may be.

5 Q And do you have reason to believe that this actually  
6 occurs?

7 A Yes, cards are stolen, we know that. There's a  
8 substantial amount of credit card fraud in various contexts  
9 in which credit cards and debit cards are used and there's no  
10 reason to think that the only people that steal credit card  
11 information are adults.

12 Q Are there any other reasons why you think a child might  
13 not respond accurately to the question of whether they have  
14 access to a payment card?

15 A Well, there's also the possibility they might have gotten  
16 the card because of a mistake by the issuer.

17 Q And do you have any reason to believe that this actually  
18 occurs?

19 A This is another topic in which it's difficult to get  
20 quantitative information. If it's a mistake, the issuer is  
21 not going to realize they have made the mistake, but there's  
22 frequent press reports about cards being issued to people's  
23 dogs and to people that are dead and to infants. And so  
24 there is --

25 MR. TODD: Objection, beyond the scope of the



1 report. This report does not say the cards are actually  
2 issued to dogs or dead people or --

3 THE COURT: Where is it in the report, Counselor?

4 MR. FRIEDMAN: It is on Page -- the portion of his  
5 report that discusses this topic is P-34-0007 on the bottom,  
6 a paragraph entitled, "Issuer Error."

7 (Pause.)

8 THE COURT: Well, it is mentioned in the report;  
9 that doesn't make it admissible, but at least it's -- that's  
10 the basis for the objection, one of them. I don't know to  
11 what extent the witness relies upon ad hoc reports in the lay  
12 press for his professional work, but you haven't asked him  
13 that. The objection on the ground it was not in the report  
14 is overruled, the objection on the ground that it lacks  
15 foundation is sustained, without prejudice, of course. If  
16 you want to pursue it, you may.

17 BY MR. FRIEDMAN:

18 Q Professor Mann, do you have reason to believe that  
19 children will come into the possession of a payment card due  
20 to issuer error?

21 A Yes.

22 Q And how do you -- what basis do you have for that belief?

23 A Frequently the press reports on solicitations that are  
24 sent to people that plainly would not be suitable card  
25 holders and are clearly the result of errors by issuers and





1 so in the report I discuss examples of solicitations sent to  
2 people's -- to a dog, solicitations sent to dead people,  
3 solicitations sent to infants. There's -- you know, you  
4 could catalog a large number of these press stories if it was  
5 important to do so, but the point is easy to see. The way  
6 that solicitations are sent is they come from these large  
7 databases and, if the databases are 99.9 percent accurate and  
8 if we send billions of card solicitations a year, there will  
9 be a large number of mistaken solicitations and, if some of  
10 those mistaken solicitations are sent to children that would  
11 like to have credit cards, they can simply return them and  
12 get a credit card.

13 Q And do you believe that that actually occurs, that  
14 children will return these mistaken applications and then get  
15 credit cards?

16 A Yes.

17 Q And what is your basis for that belief?

18 A The basis for that opinion is the material I discussed  
19 earlier which relates to the reasons why children would have  
20 a reason to want to have credit cards. And so, if you posit  
21 that, there are a substantial number, presumably thousands if  
22 you assume a reasonable error rate and look at the number of  
23 solicitations sent, solicitations sent to children and some  
24 of them get returned. It's very difficult to quantify  
25 because, by the nature of it, you can't have statistics about



1 it, these are things that happen by mistake. All I'm saying  
2 is there's enough press reports about these kinds of mistakes  
3 that a cognizable number of children are likely to have cards  
4 through this.

5 Q And these are press reports that you have reviewed?

6 A Yes.

7 Q And do these press reports -- how, if at all, do these  
8 press reports contribute to your understanding of this topic?

9 A Well, they're the principal way you would find out about  
10 this type of occurrence and so the -- I mean, they're as  
11 reliable as anything else. Some of the press reports are  
12 probably slightly inaccurate, but this is a common topic in  
13 the press and so I take it as indicating that issuers make  
14 this kind of mistake sometimes.

15 Q And it's furthermore you believe that that mistake  
16 results in children actually having the payment cards?

17 A Yes.

18 Q Professor Mann, are there adults that do not have access  
19 to a general purpose payment card?

20 A Yes.

21 Q Why don't those adults have access to a general purpose  
22 payment card?

23 A Because even at this late stage of the development of the  
24 credit card industry, there's some people that aren't likely  
25 to be profitable card holders for the general purpose credit



1 card companies -- credit card issuers.

2 Q Why is it that they are not likely to be profitable?

3 A One common reason is they don't have enough disposable  
4 income that they would be likely to use the card enough to  
5 generate sufficient revenues to justify the cost of issuing  
6 the card to them.

7 Q Do you have an opinion as to whether people in this  
8 category are likely to have reloadable prepaid cards?

9 A Yes.

10 Q And how do you have an opinion in this respect?

11 A My opinion is based on my understanding of the business  
12 models that motivate people to issue general purpose credit  
13 cards and debit cards and the business models that motivate  
14 people to issue prepaid cards. And if the main group of  
15 adults that don't have general purpose credit cards is people  
16 that don't have a lot of disposable income, those are not the  
17 target market for prepaid cards, because a prepaid card is  
18 useful to somebody who has money that they just want to put  
19 on a credit card today with no -- on a card today with no  
20 particular thing on which to spend it. So, if you think of  
21 people that have almost no disposable income, they're not  
22 likely to go to a convenience store and buy a card for \$50  
23 thinking, well, some time in the next month or so I might  
24 want to go buy something on the Internet and I don't really  
25 know what. That's a product that's not really targeted at



1 the person with no disposable income, the target market is  
2 people that have disposable income and have some reason not  
3 to have a general purpose payment card.

4 Q So do you believe that it is likely or unlikely that  
5 individuals who do not have a general purpose payment card  
6 will get access to a reloadable prepaid card?

7 A I think it's relatively unlikely that adults that don't  
8 have a general purpose payment card in fact will be regular  
9 purchasers of reloadable prepaid cards.

10 MR. FRIEDMAN: Your Honor, may I confer with counsel  
11 for a moment --

12 THE COURT: Yes?

13 MR. FRIEDMAN: -- co-counsel? Thank you.

14 (Discussion held off the record.)

15 BY MR. FRIEDMAN:

16 Q Professor Mann, have you studied the payment card  
17 networks' historical practices with respect to enforcing U.S.  
18 laws against merchants?

19 A Yes.

20 Q And what have you done in connection with this  
21 scholarship?

22 A I have -- it's a central topic of the William and Mary  
23 Law Review article that we talked a lot about earlier today  
24 and so I have, you know, studied the area and read widely and  
25 written about it.





1 Q Have you analyzed this question, and that's the extent to  
2 which payment card networks' historical practices have been  
3 to enforce U.S. laws against merchants, have you analyzed  
4 that topic in your report that you filed on -- I'm sorry,  
5 that you completed on July 7th?

6 A Yes.

7 Q Can you point to in your report where you discuss this?

8 A Yes, it's at P-34, Pages 0008 to 0010.

9 Q How do you analyze this question in the report?

10 A I think it's most useful to consider a spectrum of four  
11 different types of interactions between a site and a  
12 regulatory scheme. The first one is one in which Congress  
13 has passed a statute that specifically tells the card issuers  
14 they have to do something, and so that's things like the  
15 Truth in Lending Act and the Electronic Fund Transfer Act,  
16 which specifically obligate card issuers to protect card  
17 holders from unauthorized transactions.

18 Q And what is the second category?

19 A The second category is sites on which people can engage  
20 in transactions that are unlawful, and so this would be  
21 things like gambling, Internet gambling is illegal, or the  
22 sale of contraband. So, for example, if someone is in  
23 Massachusetts and is purchasing firearms that are unlawful to  
24 be shipped into Massachusetts, that's an illegal transaction  
25 for the person to buy that.



1 Q And what is the third category?

2 A The third category is one in which the payment  
3 transaction itself is not unlawful, but there is something  
4 that the site is doing, the person who operates the site is  
5 engaged in some form of behavior that might be illegal. And  
6 so a good example here would be something like the Americans  
7 With Disabilities Act which imposes accessibility  
8 requirements on Websites for blind people and the like, and  
9 some Websites don't comply, but the credit card networks have  
10 never considered cutting -- have never cut off merchants  
11 because of failure to comply with these types of interface  
12 regulations.

13 Q And what types of things, if you know, does the ADA  
14 require?

15 A I don't know that much about those regulations, they're  
16 fairly technical, but the general idea is that you are -- the  
17 sites are supposed to be accessible to the handicapped and  
18 blind are the main people that I am familiar with, there's  
19 mechanisms where the site can be read by your computer and it  
20 will -- the computer can read it out loud to a blind person,  
21 because a blind person can't see what's on the screen.

22 Q And does the ADA in connection with these requirements  
23 have any specific requirements for payment card networks --

24 A It does not.

25 Q Okay.



1 A It doesn't say that payment card networks have to do  
2 anything and they don't.

3 Q And this example you're discussing is in your third  
4 category?

5 A Yes.

6 Q All right. What is the fourth category?

7 A The fourth example is a site that just doesn't have  
8 commercial transactions and so they don't accept payment  
9 transactions. You might have a site that displays  
10 pornography --

11 Q And have --

12 A -- but if they don't sell the pornography, if they are  
13 not a Visa or Mastercard merchant, then Visa or Mastercard  
14 has no leverage over them of any kind.

15 Q Have you considered which if any of these categories COPA  
16 would fall in?

17 A Yes.

18 Q Which category do you believe it would fall in?

19 A COPA would fall in the third and the fourth categories.

20 Q And why do you think it would fall in the third category?

21 A Because the transactions that would happen at these sites  
22 themselves would not be unlawful, but it's possible that a  
23 site might not have an interface that would allow the  
24 operator of the site to get the affirmative defense that COPA  
25 provides if they don't have the right kind of interface, if



1 they don't condition access on the right type of information.

2 Q Do you think that, based on their historical practices,  
3 payment card networks will be willing to enforce COPA against  
4 Websites that fall within this third category?

5 A I don't think that payment -- it is my opinion that  
6 payment card networks would not enforce -- would not  
7 terminate merchants as members of Visa and Mastercard because  
8 of their failure to have the interface that COPA requires.

9 Q And are there statutes you've considered that are  
10 analogous to COPA in reaching that conclusion?

11 A Well, I think the best current example would be the  
12 Unlawful Internet Gambling Enforcement Act that Congress  
13 recently passed.

14 Q Okay. And how is that analogous?

15 THE COURT: What was the name of that act again?  
16 I'm sorry.

17 THE WITNESS: It's the Unlawful Internet Gambling  
18 Enforcement Act of 2006, I think the President signed it in  
19 October. That's not my professional opinion, my professional  
20 opinion is that he signed it some time...

21 BY MR. FRIEDMAN:

22 Q Okay. And what about -- if anything about --

23 A ... some time just before an election.

24 Q Is there anything about that act that contributes to your  
25 understanding of the extent to which credit card companies





1 are going to be willing to enforce COPA?

2 A Well, what you see in that act is the Justice Department  
3 has tried for some time to eradicate Internet gambling by  
4 people in this country and, despite a lot of efforts by  
5 people, Internet gambling has continued and has become very  
6 popular with American residents even though it's illegal.  
7 And so this statute specifically obligates the payment card  
8 networks to identify and block the transactions and since  
9 it's been enacted they have done that.

10 Q You mentioned also that you thought COPA would fall into  
11 your fourth category; why is that?

12 A Well, to some degree it falls in the fourth category,  
13 because when you talk about adult-sensitive content, a lot of  
14 the Websites that generate it don't do so based on commercial  
15 payment transactions where they collect revenues from the  
16 visitors to the sites, instead they rely either on, you know,  
17 not having any revenue at all simply because they want to  
18 have this kind of information disseminated or they collect  
19 revenue from indirect sources such as advertising or the  
20 like.

21 MR. FRIEDMAN: Your Honor, at this point I would  
22 like to move Professor Mann's expert report into evidence.

23 THE COURT: Exhibit number, please?

24 MR. FRIEDMAN: Yes, your Honor, it's Exhibit Number  
25 34.



1 THE COURT: Any objection?

2 MR. TODD: Subject to cross-examination and possible  
3 motion to strike, no objection at this time, your Honor.

4 THE COURT: All right. The report is received into  
5 evidence, it being Plaintiff's Exhibit 34.

6 (Plaintiff's Exhibit Number 34 received in  
7 evidence.)

8 BY MR. FRIEDMAN:

9 Q Professor Mann, you mentioned the Internet gambling act  
10 before, do you know whether before the 2006 act payment card  
11 companies would cut off merchants in connection with Internet  
12 gambling?

13 A Some payment card intermediaries terminated access to  
14 some gambling sites, largely based on some heavy pressure  
15 from the Attorney General of the State of New York. There  
16 was some very notable settlements with people like PayPal and  
17 Citibank and this was based on the threat of prosecution for  
18 being an accomplice in the unlawful transactions. And  
19 pressure from General Spitzer persuaded some people that they  
20 should stop doing it, but that was not enough to cause it to  
21 be stopped generally, and so Congress eventually passed a  
22 broader statute that required all payment intermediaries to  
23 identify and block all of the transactions.

24 MR. FRIEDMAN: Your Honor, if I could just have one  
25 more moment to confer with counsel? I believe I'm ready to



1 pass the witness.

2 (Discussion held off the record.)

3 MR. FRIEDMAN: Your Honor, I have no further  
4 questions of Professor Mann at this time.

5 THE COURT: All right. Professor Mann, will you  
6 answer questions for the defense, please?

7 THE WITNESS: I would be delighted.

8 (Pause.)

9 MR. TODD: Your Honor, if I could have permission to  
10 approach the bench and provide you with some copies of  
11 exhibits?

12 THE COURT: Thank you.

13 MR. TODD: Thank you, your Honor.

14 (Pause.)

15 MR. TODD: And, your Honor, I'm -- your Honor, if I  
16 could also ask you to switch the monitor to the defendants?

17 THE COURT: Sure.

18 (Pause.)

19 THE COURT: It's now on the defense side.

20 MR. TODD: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. TODD:

23 Q Good afternoon, Professor Mann. My name is James Todd,  
24 counsel for the defendant. We met at your August 8th, 2006  
25 deposition, that's correct? We met at your deposition, is



1 that correct?

2 A Yes.

3 Q Professor Mann, you testified at some length about the  
4 amount of research you do before you publish any of your  
5 scholarly works, is that correct?

6 A Yes, I did.

7 Q But you didn't do any research about prepaid cards in  
8 preparation of your rebuttal report, isn't that correct?

9 A That is true.

10 Q In fact, you didn't do any research about any aspect of  
11 your report, is that correct?

12 A That is correct.

13 Q Professor Mann, you claim that surveys attempting to  
14 collect information about credit card behavior are difficult  
15 to implement, correct?

16 A Yes, I do.

17 Q Now, the evidence you cite in your report for this  
18 proposition is Chapter 5 of your book that came out this  
19 fall, is that correct?

20 A That's true.

21 Q Now, the actual discussion in your book concerns surveys  
22 about family debt levels and bankruptcy rates, correct?

23 A Yes.

24 MR. TODD: Can we bring up Defendant's -- what has  
25 been marked as Defendant's Exhibit 411?





1 BY MR. TODD:

2 Q This is Chapter 5 from your book, correct?

3 A So did you buy a copy of the real book?

4 Q Not yet.

5 A Oh, all right.

6 Q But I did not know until today that in fact it was

7 published.

8 A It is available on Amazon.com. The Website is

9 Chargingahead.net, readily available.

10 Q I'm sure the ACLU's blog will broadcast that to the world

11 tonight.

12 A Probably not.

13 MR. TODD: Now, if we can highlight the first

14 sentence of the last paragraph on the page?

15 (Pause.)

16 THE COURT: It's 411? I'm having trouble finding it

17 in here.

18 MR. TODD: Well, let me check our copy, your Honor.

19 (Pause.)

20 THE COURT: It goes from 410 to 412.

21 MR. TODD: Yes, I'm sorry, your Honor. I actually

22 have a copy here, let me... let me supplement the paper

23 record, your Honor, if you'll indulge me for a moment.

24 THE COURT: If it's in here, it doesn't have a tab

25 on it, so I can't...



1           MR. TODD: Okay. Thank you, your Honor, for  
2 enduring our poor tabbing.

3 BY MR. TODD:

4 Q Now, the first sentence says, "The problem with survey  
5 data, however, is that they are likely to be inaccurate for  
6 families that do not understand the significance of the  
7 amount that they are spending and borrowing." That's what it  
8 says, correct?

9 A It does.

10 Q Now, Professor Mann, you're not suggesting that teens do  
11 not understand whether or not they have a payment card, is  
12 that correct?

13 A That's correct.

14 Q And, Professor Mann, you criticize Mr. Clark for relying  
15 in part on a Wall Street Journal article about survey results  
16 from Teenage Research Unlimited in your report, is that  
17 correct?

18 A I believe I state -- what I would say is I state in my  
19 report that I think that the results from that survey  
20 probably understate the actual rate of payment card usage.

21 Q Okay. But you also criticized him for relying on the  
22 Wall Street Journal article, is that correct?

23 A I suggested that if you wanted to evaluate the survey  
24 carefully and rely on it, you would want to know more about  
25 it. I have never seen a detailed survey on that subject at



1 the time I wrote my report and I would have wanted to see it  
2 if I could.

3 Q Okay. Now, in your report you relied on a one-page  
4 article from Internet Retailer about survey data, is that  
5 correct?

6 A I did.

7 MR. TODD: And can we bring up what's been marked as  
8 Defendant's Exhibit 404?

9 BY MR. TODD:

10 Q This is the article from Internet Retailer, is that  
11 correct?

12 A That is.

13 Q Now, Professor Mann, this isn't the actual report from  
14 Forester, is that correct?

15 A That is correct.

16 Q And you don't know if this survey was a random sample  
17 from this document, is that correct?

18 A I believe that my report stated accurately the survey  
19 that I had examined and that my report said I had read the  
20 story in Internet Retailer, and I had read the story in  
21 Internet Retailer and it is exactly as you see it before you.

22 MR. TODD: Motion to strike as nonresponsive. I  
23 asked him if he knew from this document whether or not the  
24 survey was a random sample.

25 THE COURT: I don't think he answered it.



1 MR. TODD: That's correct.

2 THE COURT: The answer is stricken.

3 Are you able to answer the question, sir?

4 THE WITNESS: I do not.

5 BY MR. TODD:

6 Q And you don't know what the survey methodology was, is  
7 that correct?

8 A I am generally familiar with the methodology that  
9 Forester Research uses, but I haven't seen this particular  
10 survey, no.

11 Q And you didn't purchase the Forester report, is that  
12 correct?

13 A That is true. Forester doesn't give things away to  
14 people that aren't the Government.

15 Q And you didn't call up Forester and ask them about the  
16 report, is that correct?

17 A I absolutely did not.

18 Q And you don't know the question the report asked about  
19 teens making online purchases, is that correct?

20 A I do not.

21 Q And you don't know whether this reported 52 percent of  
22 online teens is the number of teens -- percentage of teens  
23 that are online or the percentage of all teens, is that  
24 correct?

25 A I believe that the statement in the report is fairly





1 specific about what it says and I think my testimony is  
2 consistent with exactly what it says in the Internet Retailer  
3 story.

4 Q Now, Professor Mann, the Internet Retailer press release  
5 does not indicate whether the survey contained information on  
6 how teens paid for their online purchases, is that correct?

7 A That's correct.

8 Q Now, in your report you also cited a new story about a  
9 Junior Achievement International Personal -- I'm sorry, not a  
10 news story, you cited also the Junior Achievement  
11 International Personal Finance 2006 survey, is that correct?

12 A I did.

13 MR. TODD: And can we bring up what's been marked as  
14 Defendant's Exhibit 402?

15 BY MR. TODD:

16 Q This is the Junior Achievement Worldwide report you cite,  
17 is that correct?

18 A Yes, it is.

19 Q Now, this report discussed survey results for teens 13 to  
20 18-plus, is that correct?

21 A I think that's right.

22 Q Now, this was not a random sample, is that correct?

23 A I don't recall. You have to give me a copy of it if you  
24 want me to answer more specific questions.

25 Q Sure.



1 MR. TODD: If we can turn to Defendant's 402-0003,  
2 the...

3 THE WITNESS: Could you give me a copy of this  
4 before you ask me questions about it? This is illegible to  
5 me.

6 (Pause.)

7 MR. TODD: We seem to be missing some tabs. With  
8 the Court's indulgence, I will find 402 -- here it is. And  
9 my only question concerns the highlighted text. Permission  
10 to approach, your Honor?

11 THE COURT: Sure.

12 THE WITNESS: Thank you, sir.

13 BY MR. TODD:

14 Q Now, the second paragraph, the first sentence, states,  
15 quote, "Because the respondents were not randomly selected,  
16 the survey results cannot be represented as a scientific  
17 cross-section of American students between the ages of 13 and  
18 18-plus," end quote. That's what it says, correct?

19 A Absolutely.

20 Q Now, Professor Mann, you also cited a report from the Pew  
21 Internet in American Life Project called "Teens and  
22 Technology," is that correct?

23 A I did.

24 Q And that survey found that 87 percent of teens ages 12 to  
25 17 use the Internet, is that correct?



1 A Not precisely.

2 Q And it also found that 43 percent of those teens made  
3 online purchases, is that correct?

4 A Generally; you're paraphrasing what they found, but  
5 that's reasonably accurate.

6 Q So, this number is lower than that reported by Internet  
7 Retailer, correct?

8 A Yes, it is.

9 Q In fact we heard you testify that it was 37 percent of  
10 teens made online purchases, is that correct?

11 A Yes.

12 Q Now, if we could bring up your demonstrative exhibit?

13 (Pause.)

14 Q This is the demonstrative exhibit we saw earlier today?

15 THE COURT: Give us some -- well, it doesn't have a  
16 number?

17 MR. TODD: It doesn't have a number --

18 THE COURT: Okay.

19 MR. TODD: -- this was the demonstrative, your  
20 Honor. We'll call it Plaintiff's Demonstrative 1, if that's  
21 acceptable to plaintiff?

22 MR. FRIEDMAN: That's fine.

23 THE COURT: I have it.

24 MR. TODD: You have a copy? Okay.

25 BY MR. TODD:



1 Q Now, in this you stated that 37 percent of 16-year-olds  
2 have access to payment cards, based on your calculations, is  
3 that correct?

4 A Yes, it is.

5 Q Now, of the teens that have access to payment cards, you  
6 agree that a substantial number of teens have that card on  
7 their parents' account, is that correct?

8 A I mean, substantial is a very vague term, but some do,  
9 yes.

10 MR. TODD: Now, if we could -- just to look at -- if  
11 we could zoom in on the numerator section of this?

12 BY MR. TODD:

13 Q Now, you subtracted the number of 12 16-year-olds -- I'm  
14 sorry, you subtracted the number of 12 to 15-year-olds from  
15 the number of 12 to 16-year-olds in each of the rows, is that  
16 correct?

17 A Yes.

18 Q And then you felt that it was appropriate to add up the  
19 total number of each of the responses under 16-year-olds and  
20 use that as your numerator, is that correct?

21 A Yes, I did.

22 MR. TODD: Can we bring up Defendant's Exhibit --  
23 what's been marked as Defendant's Exhibit 405?

24 BY MR. TODD:

25 Q This is the first page of the questionnaire from the





1 Teenage Research Unlimited, is that correct?

2 A I have no way of knowing that.

3 Q Well, we discussed this document at your deposition,  
4 isn't that correct?

5 A I don't recall that. If you want to -- I don't recall  
6 discussing this document and I don't recall seeing it, to  
7 tell you the truth, but I'm not going to say that I didn't, I  
8 just say I don't recall it.

9 MR. TODD: If I could have permission to approach  
10 the witness, your Honor?

11 THE COURT: What do you have?

12 MR. TODD: I have a copy of the survey questions,  
13 which is Defendant's 405.

14 THE WITNESS: I've got them in front of me --

15 THE COURT: What's wrong with the --

16 THE WITNESS: -- I've got the survey questions in  
17 front of me.

18 BY MR. TODD:

19 Q Okay. Well, if we can zoom back out, it's marked as Mann  
20 Deposition Exhibit 9 from your August 8th, 2006 deposition --

21 A Okay.

22 Q -- that's what it says there?

23 Okay. Could we turn to Page --

24 A Well, that supports your view that we talked about it.



1 Q Well, I'm just asking if you recognize it --

2 A I'm just saying I don't --

3 Q -- this was a deposition exhibit at your deposition, is  
4 that correct?

5 A I recognize it has that stamp on it. I'm telling you the  
6 truth, I don't recall talking about it, but if we did, we  
7 did.

8 Q Okay. Now, if we can turn to what's been marked  
9 Defendant's Exhibit 405-0009, which is actually Page 10.

10 A I've got it.

11 MR. TODD: And if we could zoom in on Question 4?

12 BY MR. TODD:

13 Q Now, the question said, "Do you have," dot, dot, dot, and  
14 then it had an instruction in all capitals, "fill in all that  
15 apply," is that what it says?

16 A It does.

17 Q So, is it reasonable to infer that a teen might have  
18 checked more than one box if he had both a debit card in his  
19 own name and access to a parent's credit card?

20 A I don't think so.

21 Q But it says fill in all that apply, is that correct?

22 A It does say that.

23 Q And yet your testimony is that a teen would have only  
24 filled in one of these circles even if he had two cards?

25 A Based on all the information available to me, I think



1 it's unlikely any of them -- that any substantial number had  
2 more than one of the products.

3 Q Well, certainly, hypothetically, you will admit that if a  
4 teen had more than one -- that had a debt card in his own  
5 name and access to a parent's card, he might follow the  
6 instruction to fill in all that apply and fill in both  
7 circles, is that a possibility?

8 A Yes, but Mr. Clark's report, which reflected his  
9 interviews with the people that conducted the survey,  
10 indicated that there was substantially no overlap between the  
11 categories and, because he's the only person that's actually  
12 talked to them, I was going to assume that he truthfully  
13 reported his conversation with them and that they truthfully  
14 understood the results of the survey. And so I constructed  
15 my exhibit on the premise that Mr. Clark's discussion was  
16 truthful.

17 MR. TODD: Move to strike as nonresponsive, your  
18 Honor.

19 THE COURT: Strike it out.

20 You can't volunteer, just answer the question, sir.  
21 If the lawyer that brought your testimony wants to cover  
22 something more, he'll do it on redirect.

23 BY MR. TODD:

24 Q Now, again, just to be clear, this asked, "Do you have,"  
25 and it had several options, among them were a debit card in



1 your name, access --

2 THE COURT: Are you still looking at Question 4?

3 MR. TODD: Yes.

4 BY MR. TODD:

5 Q -- access to a parent's debit card, interest in getting a  
6 debit card in your name, stocks and bonds, mutual funds, a  
7 certificate of deposit, a credit card in your name, access to  
8 a parent's credit card, and, finally, interest in getting a  
9 credit card in your name? And I believe I omitted a savings  
10 account and a checking account at the top. Those are some of  
11 the options, is that correct?

12 A Yes.

13 Q And so, hypothetically, are you willing to admit that a  
14 child might have filled in more than one circle here?

15 A Absolutely.

16 THE COURT: Asked and answered.

17 MR. TODD: Okay. Just confirming, your Honor,  
18 because we had the testimony that was stricken.

19 BY MR. TODD:

20 Q Now, if we could turn back to your demonstrative exhibit  
21 and highlight -- on the numerator, again, you felt that it  
22 was appropriate to do a sum for all -- for each of these  
23 responses, is that correct?

24 A Yes.

25 Q Okay. And you did not take into account the possibility





1 that a teen might have filled in more than one bubble on the  
2 Question 4, is that correct?

3 A No.

4 Q So you're testifying that you did take that possibility  
5 into account?

6 A Yes.

7 Q If we could move down to your denominator? Now, on this  
8 you derived the total number of 16-year-olds and the number  
9 of 16-year-olds that provided no answer, and then you  
10 subtracted the no answers from the total, is that correct?

11 A That is correct.

12 Q Okay. Now, if we could go back to Defendant's Exhibit  
13 405, Page 0009?

14 So the question was, "Do you have," and there wasn't  
15 a none-of-the-above response, is that correct, of one of the  
16 circles to fill in?

17 A That is correct.

18 Q But you assumed that because a child didn't necessarily  
19 have -- or fill in the circle for one of these things that it  
20 was nevertheless appropriate to subtract the no answers on  
21 your demonstrative, is that correct?

22 A Yes.

23 Q Now, Professor Mann, you're not a statistician, is that  
24 correct?

25 A I think that's a question on which reasonable minds could



1 differ.

2 Q Do you have a --

3 A A great deal of my work involves quantitative statistical  
4 analysis and I do the statistical analysis myself.

5 Q Do you have a degree in statistics?

6 A I do not.

7 Q Did you take courses in statistics?

8 A Yes.

9 Q Did you take graduate courses in statistics?

10 A No.

11 Q Do you teach statistics?

12 A I teach statistics in my classes from time to time.

13 Q In your law classes?

14 A Yes.

15 Q Now, at the time of your deposition you weren't willing  
16 to do simple math, isn't that correct?

17 A When you presented a document to me in my deposition and  
18 asked me if I agreed with calculations that you made and I  
19 was not willing to do them without having a calculator and  
20 testify as to the divisions you asked me to do without having  
21 a calculator.

22 Q I offered you a calculator at the deposition, isn't that  
23 correct?

24 MR. FRIEDMAN: Your Honor, I just object, if counsel  
25 is going to be asking about his deposition, I'd like for him



1 to hand him a copy --

2 MR. TODD: Sure. If we could put up Page 74 of the  
3 deposition?

4 BY MR. TODD:

5 Q Line 2, I asked you, question: "And you admit that 43  
6 percent of 87 percent is somewhere between 35 and 45 -- 40  
7 percent, is that correct?"

8 And you answered, "Yes."

9 And I asked you, "And you're not willing to take my  
10 word for it that it's 37.41 percent?"

11 And you answered, "Well, I'm not here to do math."

12 That was your testimony, correct?

13 A Yes.

14 Q In fact at another point in your deposition --

15 MR. TODD: -- if we could bring up Page 58, Line  
16 6 --

17 BY MR. TODD:

18 Q -- I asked you about math and you volunteered --

19 THE COURT: Wait a minute, it's not up yet.

20 (Pause.)

21 THE COURT: It doesn't have a page number, but I  
22 assume it's the one you wanted.

23 MR. TODD: Yes.

24 BY MR. TODD:

25 Q And you volunteered, "Everyone else in my family is an



1 engineer, I'm a lawyer," when I was asking you about  
2 somewhere between 35 and 40 percent, the same calculation, is  
3 that correct?

4 A That's what I said.

5 Q Okay. But now you are able to do statistical  
6 calculations, is that correct?

7 A I try to be precise with numbers; if I'm going to say  
8 numbers, I like to calculate them myself, I don't like to  
9 take people's word for numbers, that's what I do for a  
10 living.

11 Q Okay. And so that's why you relied on the one-page  
12 article from Internet Retailer that said 52 percent of teens  
13 online make online purchases? You took their word for it, is  
14 that correct?

15 A No, that's not correct.

16 Q Now, Professor Mann, you testified that you chose the  
17 Internet Retailer document in part because it was more  
18 recent, correct?

19 A I don't recall if that's what I said, but I do think that  
20 it's important in weighing how it relates to the Pew study  
21 that it is more recent.

22 Q And you cited the Internet Retailer document in part  
23 because it supported your expectations, correct?

24 A No, I cited the Internet Retailer document because it was  
25 something which I was familiar and it's a periodical that I





1 subscribe to and follow regularly.

2 Q If we could bring up Page 78 of your deposition, Line 24?

3 (Pause.)

4 Q I asked, "Do you think it's appropriate to weight this  
5 finding," referring to Internet Retailer --

6 THE COURT: I'm sorry, where is that, line what?

7 MR. TODD: Line -- I'm sorry, we don't have it --

8 THE COURT: It isn't even on the screen.

9 MR. TODD: -- Line 24 -- really Line 25, your Honor.

10 BY MR. TODD:

11 Q "Do you think it's" --

12 THE COURT: It's not on the screen.

13 MR. TODD: At Line 25, your Honor, on Page 278.

14 THE COURT: Oh, way up there? Okay.

15 BY MR. TODD:

16 Q "Do you think it's appropriate to weight this finding" --

17 and we were discussing the Internet Retailer -- "equally  
18 with Pew?"

19 And you answered, "I think it's appropriate to look  
20 at this as more recent information and it suggests, which is  
21 what you would expect if it was correct, that the share of  
22 online shopping has been going up," that was your testimony,  
23 correct?

24 A That was my testimony.

25 Q Now, you were looking for trend data, is that correct?



1 A No.

2 Q Professor, you didn't ask Pew if they had more recent  
3 research, is that correct?

4 A No.

5 MR. TODD: If we could bring up Page --

6 THE WITNESS: I mean, yes, it's correct. Sorry.

7 BY MR. TODD:

8 Q And you don't know if Pew had asked teens a question like  
9 this before in earlier surveys, is that correct?

10 A No, that's not correct.

11 MR. TODD: If we could bring up Page 79, Line 25?

12 BY MR. TODD:

13 Q I asked you, "Do you recall stating before that on the  
14 footnote, you mentioned Footnote 23, that the survey had  
15 previously asked, you know, different forms of the question?"

16 And you answered, "Yes."

17 And I asked you, "Has Pew asked this question of  
18 teens before?"

19 And you answered, "I don't know, that's not clear."

20 And I asked you, "Did you look for any other studies  
21 by Pew on?"

22 And you answered, "I did not."

23 And I asked you, "Why not?"

24 And you said, "Because it wasn't within the scope of  
25 -- you know, of my -- you know, what I was doing."



1                   That was your testimony, correct?

2    A    Yes.

3    Q    Now, Professor Mann, the Pew study didn't ask about  
4    teens' access to a payment card, is that correct?

5    A    That is correct.

6    Q    Now, Professor Mann, you cite two entire chapters or two  
7    different books for the proposition that card issuers market  
8    payment cards to youth, is that correct?

9    A    Yes.

10   Q    And when you use the term youth, you employ the term to  
11   mean minors, is that correct?

12   A    No.

13   Q    Do you employ the term to include minors?

14   A    I don't understand the question.

15   Q    When you use the term youth, do you employ the term to  
16   include minors?

17   A    I don't believe that I commonly use the term youth.  And  
18   I'm sorry that's not responsive to your question, but I don't  
19   really know how to answer it.  I think I have tried to use  
20   the term children, not the term youth, and if I use the term  
21   youth in my report that's probably the term I was using then.  
22   I have tried in my testimony today to use the term children  
23   and I've tried to use that to refer to people that are under  
24   the age of 17.

25   Q    Okay.  Could we bring up -- just so we're all on the same



1 page, could we bring up Plaintiff's Exhibit 34? And if we  
2 can turn to Page 5, which is actually 0006?

3 And this section is entitled, "Marketing to Minors."  
4 And the first sentence reads, "The most important omission is  
5 his failure to acknowledge one of the main thrusts of credit  
6 card marketing in this country, which is to get payment cards  
7 into the hands of youth as early as possible." That was what  
8 -- the first sentence in your report, is that correct?

9 A Absolutely. I have tried to be more precise in my  
10 terminology today.

11 Q Okay. Now, can -- and in fact here, while we have it on  
12 the screen, we see the two cites for Manning, Chapter 6, and  
13 your work, Chapter 14, but we've actually established that  
14 that should be Chapter 13, correct? At the end of the --

15 THE COURT: I'm totally confused.

16 MR. TODD: I'm sorry, at the end of the second  
17 sentence, I was just -- while we had it here -

18 THE COURT: What is this from? I'm sorry.

19 MR. TODD: This is from -- we just highlighted the  
20 two sections, your Honor.

21 THE COURT: What is the document that this comes  
22 from?

23 MR. TODD: This is his report, your Honor --

24 THE COURT: Okay.

25 MR. TODD: -- this is his rebuttal report --





1 THE COURT: Okay.

2 MR. TODD: -- Plaintiff's Exhibit 34, which has been  
3 admitted into evidence.

4 THE COURT: I understand now.

5 MR. TODD: Okay.

6 BY MR. TODD:

7 Q And these are the cites that you have to those two  
8 chapters, Chapter 6 of Professor Manning's work and Chapter  
9 14 of your work, but I think we established at the deposition  
10 that that should be Chapter 13, is that correct?

11 A Yeah, we established that I don't read my own book often  
12 enough to know what chapter is which one.

13 Q All right.

14 A It's supposed to say Chapter 13.

15 Q Yes. All right.

16 MR. TODD: If we can bring up what's been marked as  
17 Defendant's Exhibit 409?

18 BY MR. TODD:

19 Q This is Chapter 6 of Professor Manning's work -- or the  
20 first page of Chapter 6 of Professor Manning's work, is that  
21 correct?

22 A Absolutely.

23 Q And it's entitled, "Credit Cards on Campus," correct?

24 A Absolutely.

25 Q Now, Professor Mann, Professor Manning's chapter talks



1 about marketing payment cards to college students, correct?

2 A Yes.

3 Q And Professor Manning's chapter does not in fact mention  
4 marketing to minors, is that correct?

5 A I think that's right.

6 MR. TODD: And if we could bring up Defendant's  
7 Exhibit 412?

8 BY MR. TODD:

9 Q This is the first page of Chapter 13 of your book, is  
10 that correct?

11 A Yes. I think this might be a copyright violation to be  
12 disseminating this without buying a copy, but the Government  
13 might be immune from the Copyright Act.

14 Q Now, on the first page of this --

15 MR. TODD: -- and if we could zoom in on the  
16 highlighted section?

17 BY MR. TODD:

18 Q -- you did call for a ban on marketing directed at minors  
19 and college-age persons, correct?

20 A Yes, I did.

21 Q Okay.

22 MR. TODD: And if we could bring up the third page  
23 and highlight the first sentence of the last paragraph?

24 BY MR. TODD:

25 Q You say, "The problem is not unique to persons under age



1 18, but to the younger population broadly defined." That's  
2 what that sentence says, correct?

3 A Yes. The problem is not solely people that are children.

4 Q Okay. And then the chapter goes on to talk about college  
5 students and graduate students, is that correct?

6 A That is true.

7 Q Okay. Now, Professor Mann, you believe it's a good thing  
8 that families can permit their children to use cards, is that  
9 correct?

10 A I think that's a decision parents need to make for  
11 themselves.

12 Q Could we --

13 A -- if I understand --

14 Q -- I'm not sure we're in disagreement, but just --

15 A -- if I understand the question you're asking.

16 Q Sure. Well, just to make sure we're not in disagreement,  
17 if we could bring up Page 5 of this chapter, which is... the  
18 third sentence highlighted says, "For example, the efficacy  
19 of the card as a payment system makes me reluctant to deprive  
20 families of the ability to permit use of cards by their  
21 children, particularly when their children are in a semi-  
22 independent situation like college." That's what the  
23 sentence says, correct?

24 A Yes.

25 Q Okay. And you agree that some parents review their



1 payment card bills, is that correct?

2 A Yes.

3 Q Now, Professor Mann, before this rebuttal you have never  
4 specifically written about marketing to minors, is that  
5 correct?

6 A That's true.

7 Q And, although you claim that you have studied the  
8 marketing documents of the card issuers, you did not cite any  
9 marketing documents in your report, is that correct?

10 A That's right.

11 Q And, Professor Mann, you believe that the card issuers  
12 market their cards to minors, correct?

13 A Absolutely.

14 Q And as a result of this marketing you believe that minors  
15 obtain cards without their parents' knowledge and consent, is  
16 that correct?

17 A Yes.

18 Q Now, you don't know the number of minors with credit  
19 cards, correct?

20 A That's true.

21 Q And you don't know the number of minors with debit cards,  
22 is that correct?

23 A That's true.

24 Q Now, in your report you -- on Page 7, you cited an  
25 article by David Gosnell (ph.) about JP Morgan's -- JP Morgan





1 Chase's Firm card to support the proposition that card  
2 companies target prepaid cards to minors, is that correct?

3 A Yes.

4 MR. TODD: Could we bring up what's been marked as  
5 Defendant's Exhibit 415?

6 BY MR. TODD:

7 Q This is the article by David Gosnell, is that correct?

8 A I mean, I just can't see it, but it probably is.

9 Q It's by David Gosnell, it's --

10 A I'm just saying I can't see the article, but I'm willing  
11 to believe that it is.

12 Q Okay. Now, this article talks about a card for which  
13 parents need to co-sign, is that correct?

14 A Yes. This is like the Visa Bucks card that I described.

15 Q Okay.

16 A And the article in fact describes the Visa Bucks card  
17 that was in my testimony.

18 Q Right. And it also describes the Firm card, is that  
19 correct?

20 A Yes.

21 Q In fact, in the middle column, the third full  
22 paragraph --

23 MR. TODD: -- if we can highlight that?

24 (Pause.)

25 MR. TODD: Do I have this correct? There's the --



1 BY MR. TODD:

2 Q -- the paragraph says, "The Firm card also comes in the  
3 mail with teen's name embossed on it, although the card only  
4 can be issued to a co-signing parent. Parents and their  
5 children can also check the balance and track spending and  
6 transactions online." Is that correct?

7 A Yes.

8 Q Okay. But you cited this in support of the proposition  
9 that the credit card companies target prepaid cards to  
10 minors, correct?

11 A I did.

12 Q Okay. Now, you also -- if we can go back to your report,  
13 Page 7, you also cited an article by Cards International for  
14 the proposition that credit card companies market prepaid  
15 cards to minors, is that correct?

16 A Yes.

17 MR. TODD: Can we bring up what's been marked as  
18 Defendant's Exhibit 414?

19 BY MR. TODD:

20 Q This is the article from Cards International, is that  
21 correct?

22 A Yes.

23 Q And this article also says that parents need to co-sign,  
24 is that correct?

25 A That is a correct description of the Firm and Visa Bucks



1 products.

2 Q Okay. And, finally, on your report, Page 7, you cite an  
3 article by Laurie Hawkins, is that correct?

4 (Pause.)

5 A Oh, yes, absolutely, yes.

6 Q Okay.

7 MR. TODD: If we can bring up Defendant's Exhibit  
8 416?

9 BY MR. TODD:

10 Q This is a Web printout of the article by Laurie Hawkins,  
11 correct?

12 A Yes.

13 Q Now, this article says that the effort to market the  
14 Netspend card to teens was slow going, is that correct?

15 A It does say that.

16 Q And it says that they now -- that "they now target the  
17 un-banked and under-banked adult population," is that  
18 correct?

19 A As I testified this morning, Netspend has developed some  
20 new product lines in addition to the one that's targeted at  
21 children.

22 Q Okay, but this is the article that you cited in your  
23 report, correct?

24 A This is one of the sources about Netspend, that's  
25 correct.



1 Q Okay. And this article doesn't mention whether parents  
2 need to co-sign or not, correct?

3 A That's true.

4 Q Okay. Now, Professor Mann, you cite an article by Jolane  
5 Houtz (ph.) --

6 A Yes.

7 Q -- for the proposition that card issuers have dropped  
8 their parent co-signing requirement for teen cards, correct?

9 A Yes, I do.

10 MR. TODD: Can we bring up what's been marked as  
11 Defendant's Exhibit 413? Zoom in on the document a little.

12 BY MR. TODD:

13 Q And I apologize that it's small, but this is a Web  
14 printout of the article from Jolane Houtz, correct?

15 A I just --

16 Q Or a page?

17 A Yeah, I just can't be sure of that, but that sounds like  
18 the stuff she said; that doesn't look like the article that I  
19 saw.

20 Q That's right, I think we actually had an issue about this  
21 at your deposition.

22 A We did.

23 Q But you were able to confirm that it was just a different  
24 version, is that correct?

25 A Right, but the problem is it's difficult for me to





1 testify about this article when it's off the Internet, it's  
2 not the same thing as I have looked at when I wrote my  
3 article --

4 Q Yes.

5 A -- my report, and so I'm reluctant to agree that this is  
6 the same thing.

7 Q That's right, but in fact at your deposition we had some  
8 colloquy about the fact that you provided all your documents  
9 to Latham when you turned in your report, correct?

10 A I did.

11 MR. FRIEDMAN: Your Honor, I just request that he  
12 hand the witness the sections of the deposition that he's  
13 referring to.

14 THE COURT: I can't read it either, if you're going  
15 to use it.

16 MR. TODD: Well, I believe that it's in the paper  
17 copy, your Honor, the --

18 THE COURT: What exhibit number is it?

19 MR. TODD: It's 413. And, I'll tell you what, I  
20 will get a copy. If I may approach the witness?

21 THE COURT: If I have it here, I'll look and find  
22 it. I didn't know I had it.

23 (Pause.)

24 THE COURT: I have 413.

25 MR. TODD: Yes. And if I may approach the witness



1 and provide him with a copy?

2 THE COURT: Sure.

3 MR. TODD: Thank you, your Honor.

4 (Pause.)

5 THE WITNESS: Thank you.

6 MR. TODD: You're welcome.

7 THE COURT: What page is it in 413?

8 MR. TODD: If we can turn to the second page?

9 MR. FRIEDMAN: Your Honor, Counsel was referring to  
10 deposition testimony, if --

11 MR. TODD: Yes, I struck that question, your Honor,  
12 I didn't ask -- I didn't finish that question, your Honor,  
13 but if I do, I will refer to --

14 MR. FRIEDMAN: Thank you.

15 MR. TODD: -- the deposition.

16 THE COURT: 413-0002, is that what's on the screen?

17 MR. TODD: Yes.

18 BY MR. TODD:

19 Q Now, the second full paragraph states that, quote, "Even  
20 in the late 1980s, college students typically needed a parent  
21 to co-sign to get a credit card, Manning said. Most credit  
22 card issuers dropped that requirement in the '90s." Is that  
23 correct?

24 A I'm not confident this is the article I relied on for my  
25 report and so I'll just --



1 THE COURT: I can't even find what you're reading  
2 from.

3 MR. TODD: It's the highlighted portion on the  
4 screen, your Honor.

5 THE COURT: It's so fuzzy I can't read it, but I  
6 have the report in front of me. Page 2?

7 MR. TODD: Yes, Page 2, it's the second paragraph.

8 THE COURT: Okay, I found it now.

9 MR. TODD: Okay.

10 BY MR. TODD:

11 Q And this says, "Even in the late 1980s, college students  
12 typically needed a parent to co-sign to get a credit card,  
13 Manning said. Most credit card issuers dropped that  
14 requirement in the '90s." That's what that highlighted  
15 section says, is that correct?

16 A I am not confident -- I don't mean to quibble, but I am  
17 not confident that this is the story that I read when I wrote  
18 my report. And we went through this some in the deposition,  
19 I don't recall how the discussion ended, but I just am not  
20 confident this is a complete version of the story on which I  
21 relied. And I am confident that when I wrote my report I  
22 provided a copy of the actual story on which I relied and  
23 this is not the same format; it may be that it has all of the  
24 content, but I'm just not confident of that. I'm happy to  
25 testify as to what this version of the story says and we can



1 move on, I'm just not confident this is what I really relied  
2 on.

3 Q Okay. If I could have --

4 A Because I think that this version is perfectly consistent  
5 with my testimony, so in the interest of moving things  
6 forward -- I'm just trying to be precise.

7 MR. TODD: Well, with the Court's indulgence, your  
8 Honor, we'll work with this and I'll come back to this issue  
9 in the deposition testimony after the break.

10 THE COURT: Okay.

11 MR. TODD: Okay? Thank you, your Honor.

12 BY MR. TODD:

13 Q So, again, the highlighted portion of this article says,  
14 "Even in the late 1980s, college students typically needed a  
15 parent to co-sign to get a credit card, Manning said. Most  
16 credit card issuers dropped that requirement in the '90s."

17 And the next paragraph in the highlighted portion  
18 states, "Today, virtually anybody who wants a credit card can  
19 have one by the time they take their first college midterm,  
20 he said." That's what it says, correct?

21 A You have read it accurately.

22 Q Excuse me?

23 A You have read it accurately.

24 Q Thank you.

25 Now, this sentence doesn't say that -- the last





1 sentence doesn't say that students under 18 are acquiring  
2 payment cards, correct?

3 A I would disagree with that. Sorry.

4 MR. TODD: If we could bring up Page 196 of  
5 Professor Mann's deposition?

6 BY MR. TODD:

7 Q Line 2, I asked you this precise question: "Are you  
8 saying that this sentence says that students under 18 are  
9 independently acquiring credit cards?"

10 And your answer was, quote, "I believe that to be  
11 true, but this sentence doesn't say that," unquote.

12 That was your testimony, correct?

13 A Yes.

14 Q Now, Professor Mann, you've never spoken with Professor  
15 Manning, is that correct?

16 A That is true.

17 Q Okay. Now, Professor Mann, if we can move on to another  
18 topic, you don't believe that state age-of-majority laws are  
19 relevant to your report, is that correct?

20 A That is true.

21 Q And moving on to another topic, Professor Mann,  
22 officially, Netspend only issues their card to adults, is  
23 that correct?

24 A It might be, I'm not sure of that.

25 MR. TODD: Can we bring up what's been marked as



1 Defendant's Exhibit 410?

2 BY MR. TODD:

3 Q This is the terms and conditions of the All Access card;  
4 we discussed this document at your deposition, correct?

5 A Right.

6 Q And the highlighted sentence down the page says, "In  
7 order to become a card holder, you must be an individual who  
8 can lawfully enter into and form contracts under applicable  
9 law." That's what the highlighted sentence says, correct?

10 A It does.

11 Q And if we can... strike that.

12 In fact, issuers of reloadable prepaid cards have to  
13 obtain a customer's date of birth and government ID before  
14 issuing a card, is that correct?

15 A Could you restate the question, please?

16 Q Sure. Issuers of reloadable prepaid cards have to obtain  
17 a customer's date of birth and a government ID before issuing  
18 or activating a card, is that correct?

19 A I wouldn't put it that way.

20 MR. TODD: Can we turn to what's been marked as  
21 Defendant's Exhibit 408?

22 BY MR. TODD:

23 Q This was the frequently-asked-questions page from  
24 Netspend's All Access card that we discussed at your  
25 deposition, correct?



1 A Right.

2 MR. TODD: If we can turn to the second page, Mr.  
3 Birdsong?

4 BY MR. TODD:

5 Q The first question is, "What do I need to get a Netspend  
6 prepaid All Access Visa prepaid card? What are the  
7 requirements?" That's what the question asked, correct?

8 A Right.

9 Q And the highlighted portions in the answer said, "Getting  
10 an All Access Visa prepaid card is easy. Go to one of our  
11 distributors where we will verify your name, address,  
12 telephone number and collect the one-time fulfillment fee."  
13 That's the first highlighted statement, correct?

14 A Right.

15 Q The next highlighted statement says, "Due to newly  
16 adopted government regulations, all customers are also  
17 required to provide their date of birth and one form of  
18 government ID to activate a Netspend card." And, "All U.S.  
19 citizens must provide their Social Security number as the  
20 form of government ID," that's what the second highlighted  
21 passage said, correct?

22 A That suggests that they think the Patriot Act requires  
23 them to get that information.

24 Q Thank you for volunteering that.

25 Now, Professor Mann, you believe that minor children



1 have access to other people's Social Security numbers,  
2 correct?

3 A I think that if minor -- yes.

4 Q Okay. And your basis for this statement at your  
5 deposition was that your daughter knows your Social Security  
6 number, correct?

7 A I don't specifically recall saying that but, if asked, I  
8 would say that, yes.

9 Q Okay.

10 MR. TODD: If we could bring up Page 226 of the  
11 deposition, Line 5?

12 THE COURT: Why is his recollection relevant if he's  
13 already said if you -- that if you would ask him he would  
14 have said yes?

15 MR. TODD: Well, I just wanted to make sure that --  
16 I've had some trouble, your Honor, sometimes with getting  
17 statements from -- and the Court has asked me to put up  
18 deposition testimony, so I just wanted to be sure here that  
19 we had -- he said he wasn't sure and I just thought we could  
20 confirm this way.

21 THE COURT: Go ahead.

22 MR. TODD: Thank you, your Honor.

23 BY MR. TODD:

24 Q At Line 5 I asked you, "So you think children have access  
25 to other people's Social Security numbers?"





1           And you answered, quote, "I do, as a matter of  
2 fact," unquote.

3           And I asked you, "Do you have any data to support  
4 that assertion?"

5           And you answered, quote, "I have the empirical fact  
6 that my daughter could tell you my Social Security number if  
7 you asked," unquote.

8           That was your testimony, correct?

9     A     It was.

10    Q     And, Professor Mann, you don't know the percentage of  
11 minors that know their parents' Social Security numbers,  
12 correct?

13    A     I do not.

14    Q     And you didn't cite any articles in your report about  
15 teens that know their parents' Social Security numbers, is  
16 that correct?

17    A     That's correct.

18    Q     Professor Mann, you're not an expert on teenage behavior,  
19 is that correct?

20    A     I wouldn't make that statement.

21           MR. TODD:  If we could bring up Page 219 of  
22 Professor Mann's deposition?

23    BY MR. TODD:

24    Q     Line 20, I asked, "What's the basis for your knowledge of  
25 teenage behavior?"



1           And you answered, quote, "I grew up in this  
2 country," unquote.

3           And I asked you, "So it's your personal knowledge?"

4           And you answered, quote, "The same knowledge that if  
5 you were to take a survey of people in my high school class  
6 and asked them how many of them had ever purchased alcohol  
7 before they were 18, I suspect that almost none of them would  
8 say yes when I'm confident that almost all of them had,  
9 because it was illegal and you would have to have a driver's  
10 license to do it and so, of course, no one did it," unquote.

11           That was your testimony, correct?

12 A    Yes.

13 Q    Moving on to another topic. Professor Mann, you don't  
14 know the number of teens with open prepaid cards, correct?

15 A    That's correct.

16 Q    And you don't know the percentage of teens with open  
17 prepaid cards, correct?

18 A    I don't know what you mean by an open prepaid card, but I  
19 don't know the percentage of teens that have one, whatever it  
20 would be, I don't know what it would be.

21 Q    Well, you testified earlier that you were familiar with  
22 the terms used in the payment card industry?

23 A    I don't think open prepaid card is a term commonly used  
24 in the circles of the industry in which I travel.

25 Q    Okay. Thank you, Professor Mann.



1                   And so you don't know the number of teens with  
2 closed-system prepaid cards, correct?

3     A    I do not.

4     Q    And you don't know the percent of teens with closed-  
5 system prepaid cards, correct?

6     A    I do not.

7     Q    And of the teens who may have prepaid cards, you don't  
8 know the ratio of open versus closed-system prepaid cards  
9 that may be held by teens, correct?

10                  MR. FRIEDMAN:  Objection, your Honor.  Perhaps he  
11 should define the terms for Professor Mann, the open and  
12 closed prepaid cards, since he's already indicated he doesn't  
13 know what at least one of them means.

14                  THE COURT:  Well, then I guess he shouldn't be  
15 answering the question, but he said he didn't accept open  
16 prepaid card as something he's familiar with in his  
17 professional circles and he did answer directly the subject  
18 of closed cards without raising any issue about it.

19                  MR. FRIEDMAN:  Yes, your Honor.

20                  THE COURT:  So, I don't know --

21                  MR. FRIEDMAN:  This question is asking him to  
22 compare the two, though.  So, if he does -- if he doesn't  
23 know what open prepaid cards are, I'm not sure how he is able  
24 to --

25                  THE COURT:  Your objection is that the question is



1 confusing?

2 MR. FRIEDMAN: Yes, your Honor.

3 THE COURT: Sustained. Do it another way, please.

4 MR. TODD: Sure.

5 BY MR. TODD:

6 Q Professor Mann, you're familiar with the Netspend card,  
7 correct?

8 A Yes, I am.

9 Q And that card can be used anywhere that -- or it claims  
10 that it can be used anywhere that a Visa debit card can be  
11 used to purchase goods and services, is that correct?

12 A Yes.

13 Q And you're familiar with cards such as the Best Buy card?

14 A I'm not familiar with that specific product, but I think  
15 I can probably guess what that product is.

16 Q And that's an example of a closed-system prepaid card,  
17 you can't use it to buy things except at a Best Buy, is that  
18 correct?

19 A I mean, I'm not familiar with that particular product,  
20 but there are such products and it wouldn't surprise me if  
21 Best had one.

22 Q Right. Okay. So, returning to my prior question, of the  
23 teens who may have prepaid cards, you don't know the ratio of  
24 open versus closed-system prepaid cards that may be held by  
25 teens, correct?





1           MR. FRIEDMAN: I object, your Honor, I'm not sure he  
2 has established that Professor Mann understands what's meant  
3 by the term open prepaid cards.

4           THE COURT: He's already declined the definition of  
5 open, so let's get both definitions, please.

6           MR. TODD: Okay.

7 BY MR. TODD:

8 Q Professor Mann, you're familiar with the Netspend card,  
9 correct?

10 A Yes, I am.

11 Q And do you agree that that is an example of an open  
12 prepaid card?

13 A I'm not familiar with the term open prepaid card, it's  
14 not a term that is used in the -- by the industry people to  
15 whom I have spoken and it's not a term that appears commonly  
16 in industry discussion of prepaid cards.

17 Q Okay.

18           MR. TODD: That's a sufficient answer for me, your  
19 Honor, I'll move on.

20           THE COURT: You --

21           MR. TODD: I'm satisfied with --

22           THE COURT: -- you're not going to ask him any more  
23 questions about closed cards?

24           MR. TODD: I am not going to ask any more questions  
25 about closed cards, your Honor. I am satisfied with the fact



1 that the witness is not familiar with the term open prepaid  
2 card.

3 Moving on, can we bring up Page 6 of Professor  
4 Mann's report, which is 0007?

5 BY MR. TODD:

6 Q Now, you have a paragraph here that talks about false  
7 applications, is that correct?

8 A Yes.

9 Q Now, the only article you cite in this paragraph is the  
10 article by Ms. Houtz, is that correct?

11 A Yes.

12 MR. TODD: Now, can we bring up Defendant's Exhibit  
13 413 again?

14 BY MR. TODD:

15 Q This is the Web printout of the article by Ms. Houtz that  
16 we discussed at your deposition, correct?

17 A Again, I just don't know what this is, I can't agree that  
18 it's anything in particular.

19 Q Sure.

20 MR. TODD: If we could highlight the deposition  
21 exhibit on the document?

22 THE WITNESS: Do you have a copy of it that I could  
23 have, that I could look at?

24 MR. TODD: I would be happy to.

25 THE COURT: The problem is what you're showing on



1 the screen doesn't have any authentication, it's just --

2 MR. TODD: Well, if I --

3 THE COURT: -- paragraphs of words.

4 MR. TODD: -- it says, "Deposition Exhibit Mann 16-  
5 8806."

6 THE COURT: The thing that you showed on the screen  
7 has nothing to identify where it came from, before you put  
8 this up, and this doesn't tell you where it came from. In  
9 other words, the authentic -- whether it's an authentic copy.

10 MR. TODD: Well, if we could highlight the top of  
11 the page --

12 THE WITNESS: And, again, just to reiterate, my view  
13 at my deposition is I don't -- I am not confident this is the  
14 story that I cited in my testimony.

15 BY MR. TODD:

16 Q Sure. Okay. We have the Website address,  
17 <http://archives.seattletimes.nwsourc.com>, and it continues on  
18 with a long identifier, identifying where I printed up this  
19 article. Do you see that there?

20 THE COURT: Okay, now we know where that came from.

21 MR. TODD: Okay.

22 THE WITNESS: If I could have --

23 BY MR. TODD:

24 Q And all I'm trying to establish is that this is a  
25 document we discussed at your deposition, is that correct?



1           MR. FRIEDMAN:  Objection, your Honor, if he's going  
2 to speak about the deposition, it might be helpful to --

3           THE WITNESS:  I can't see on the screen what you're  
4 talking about.  If you would hand me the document, I would  
5 immediately say yes.

6           MR. TODD:  Permission to approach, your Honor?

7           THE COURT:  Sure.

8           MR. TODD:  Okay.  Thank you.

9           (Pause.)

10          THE WITNESS:  This is the document you handed me at  
11 the deposition and at the deposition my reaction was that I  
12 don't -- I'm not confident this is the story on which I  
13 relied when I wrote my report, that's my testimony.

14          MR. TODD:  And, again, with the Court's indulgence,  
15 after the break I will locate the correct section of the  
16 deposition to verify this article, but if I could just ask  
17 him about -- since we did discuss this article at his  
18 deposition, I just want to ask him about a highlighted  
19 passage, with the Court's indulgence.

20          THE COURT:  Did he or someone else identify or  
21 authenticate this report as an accurate copy of something?

22          MR. TODD:  Well, your Honor, I could -- I would be  
23 happy to get into it later, but the truth of the matter is  
24 that Professor Mann testified that he submitted all documents  
25 to Latham & Watkins at the time that he turned in his





1 rebuttal report, and yet Latham & Watkins turned -- despite  
2 the requirements of Rule 26(a)(2), turned over few, if any,  
3 of the documents Professor Mann relied on in his expert  
4 report. So that plaintiff's counsel, for whatever reason,  
5 intentionally violated 26(a)(2). And so I came to the  
6 deposition with the publicly available version of the article  
7 that I was able to obtain. And, with the Court's indulgence,  
8 I will find the colloquy that I'm not sure that proves that  
9 matter, but it's certainly where this matter came up and  
10 we'll -- for now, I'd like to just ask about the question in  
11 the highlighted portion here since we did discuss this  
12 document at his deposition.

13 MR. FRIEDMAN: Your Honor, I'd just like to respond  
14 that plaintiff's counsel did not violate any of its Federal  
15 Rule of Evidence -- or any of the Federal Rules of Civil  
16 Procedure in this regard. This is a publicly available  
17 document and, to the extent to which he got a copy which is  
18 not what Professor Mann looked at, that was something that he  
19 had the opportunity to explore at deposition, it was  
20 discussed at deposition and then never, ever discussed again  
21 after that point. So, for Counsel to come in here now and  
22 say there was some type of violation of the Federal rules is  
23 false and it's untimely.

24 MR. TODD: Well, there will be a motion regarding  
25 this matter, your Honor, and there was correspondence that



1 was produced after the deposition to plaintiff's  
2 requesting --

3 THE COURT: I'm not going to let you question this  
4 witness on something that he hasn't accepted as accurate.  
5 You have to bring the colloquy in from the deposition first,  
6 otherwise we may end up with a mess.

7 MR. TODD: Yes, your Honor.

8 THE COURT: It has nothing to do with my trying to  
9 be cooperative or not, I'm just trying to manage the  
10 information.

11 MR. TODD: Your Honor, I know that we do have the  
12 afternoon break coming on at some point?

13 THE COURT: Sure, that's a good idea. We'll take a  
14 ten-minute recess. Court is in recess for ten minutes.  
15 Counsel are excused. We're off the record.

16 (Court in recess; 3:15 to 3:25 o'clock p.m.)

17 THE COURT: Mr. Todd.

18 BY MR. TODD:

19 Q If I could bring up page 191, line 3 of Professor Mann's  
20 deposition. Now this was actually about the earlier  
21 discussion we had about the Houtz article when I asked for  
22 the Court's indulgence. But I asked you, "Professor Mann,  
23 were you able to find the passage?" And you answered,  
24 "Sorry. It is in here, but it is such a different format, I  
25 couldn't find it, because it looks like it wasn't there." It



1 is on the second page of the print out, the second sentence.

2 THE COURT: The second page of your print out.

3 MR. TODD: Yes.

4 THE COURT: Go ahead.

5 Q The second sentence in the paragraph. Okay. And then  
6 the discussion went on about the first issue we discussed a  
7 few moments ago about, you know, this says even in the late  
8 1980's.

9 THE COURT: Okay.

10 Q College students typically needed a parent to co-sign to  
11 get a credit card.

12 THE COURT: We did that.

13 Q Yes, we did that. Now if we could turn to page 201, line  
14 7. I'm sorry, line 7 is hiding. 201, line 7 is coming.  
15 This was about false information. I asked, "do you have any  
16 articles you cite for that proposition?" And you answered,  
17 "the press report by Houtz is the one that is cited in my  
18 report, as you can see." And I said, "now on page 2 of that  
19 report there is a seventh paragraph, there is a story about a  
20 17-year-old who says that he got a credit card by lying about  
21 his age. That is one example. That is one child that got a  
22 credit card. Is there any other evidence in this article  
23 that other children got a credit card by lying about their  
24 age?" And your answer on the next page, "the preamble  
25 mistakes the article, what the article says so I am not



1 inclined to answer the question if you are going to base it  
2 on the article until you accurately describe the article."  
3 And I asked you, "could you show me a discussion of other  
4 minors obtaining credit cards providing false information?"  
5 And you answered, "it is most unlikely that the only person  
6 in this country that did this happens to go to high school in  
7 the town in which Ms. Houtz happens to be writing and happens  
8 to do this a few months before the article is written. And  
9 so the fact that she so easily found someone suggests that  
10 the number of people is not that small." That was your  
11 testimony concerning the document that I was showing you  
12 before.

13 MR. FRIEDMAN: I object, your Honor. First off, I  
14 don't believe he read the entirety of Professor Mann's  
15 answer. Beyond that, in reviewing the transcript, there were  
16 several comments made that seem to be characterizing prior  
17 testimony and not actually reading from the record and asking  
18 him to confirm that he said that. To the extent that he is  
19 asking Professor Mann to confirm prior testimony that he  
20 hasn't now read. I object to that extent.

21 THE COURT: Well, you are objecting to something  
22 that has already happened in this courtroom?

23 MR. FRIEDMAN: I am objecting, your Honor, he  
24 characterized earlier parts of Professor Mann's testimony --

25 THE COURT: I am just asking whether you are





1 objecting to something that counsel already read.

2 MR. FRIEDMAN: I don't believe so, your Honor.

3 THE COURT: Okay. What are you asking the Court to  
4 do?

5 MR. FRIEDMAN: First I am asking the Court to ask  
6 Mr. Todd to read the remainder of Professor Mann's answer  
7 that he now has just read a portion of.

8 THE COURT: Would you do that, Mr. Todd?

9 MR. TODD: I'd be happy to, your Honor.

10 BY MR. TODD:

11 Q You continued, "if you ask me, I would think it would be  
12 incredibly difficult as an investigative reporter to go out  
13 and find someone who would admit to having done this because  
14 it is hard to know you would go, how you would go about doing  
15 that. So if you could find anyone that would suggest there  
16 is a large number of people that do it, is the inference I  
17 would draw from this article." And I asked you, "what do you  
18 mean by a large number?" And you answered, "a substantial  
19 number, which is the number I used in my report." And I  
20 asked you, "what do you mean by a substantial number?" And  
21 you answered, "a number that is large enough to be relevant  
22 to the inquiry." I believe that was the extent of our  
23 colloquy. Is that correct?

24 THE COURT: You didn't have the whole deposition in  
25 front of him, so how can he answer that question?



1 MR. TODD: Well, that was the testimony, correct?

2 MR. FRIEDMAN: I object, your Honor. It was an  
3 unclear question.

4 MR. TODD: I am asking him --

5 THE COURT: It is a proper question. Overruled.  
6 The witness has been read the testimony. He is being asked  
7 whether that was the testimony at the deposition, whether he  
8 acknowledges that or not. That is a proper question. Did  
9 you, sir?

10 A Yes.

11 Q Yes.

12 THE COURT: I didn't hear what he said.

13 A Yes.

14 THE COURT: Okay, thank you.

15 Q Now if we could bring up Defendant's Exhibit 4-13 again.  
16 If we could go to the top of the page. This is an article  
17 entitled, Look Who is Whipping Out the Credit Card: High  
18 Schoolers. Then it has the web address in the story, and it  
19 says by Jolene, Jolane Houtz. Could we bring up Plaintiff's  
20 Exhibit 34 and go to the appendix, which I believe is page  
21 00013. If we could highlight the article by Houtz. The  
22 article is entitled, Jolane Houtz, Look Who is Whipping Out  
23 the Credit Card: High Schoolers. Seattle Times, April 23,  
24 2006. So can you agree that they have the same title,  
25 Professor Mann?



1 A Can you go back to the other one?

2 Q Yes.

3 A Yes.

4 Q Okay. And --

5 THE COURT: Is there any date on the one that is on  
6 the screen now somewhere?

7 A You can get the date from the web address. It says it is  
8 April 23, 2006.

9 THE COURT: I appreciate that. I just want to know,  
10 on the face of it.

11 Q The web address at the end there, your Honor. It says  
12 2-0-0-6 0-4 2-3, the date.

13 THE COURT: April 23.

14 Q Yes.

15 THE COURT: I just want to tie them in if they are  
16 there.

17 Q Yes, your Honor. Now if we could turn to the second page  
18 of this document. And highlight the seventh paragraph. The  
19 seventh paragraph reads, Jordan, a student high school senior  
20 got his first Visa a few months ago at age 17 after lying  
21 about his age on the application. That is what the first  
22 highlighted portion says, correct?

23 A Yes.

24 Q And the next highlighted --

25 A Again I'd like to just repeat, if I could explain. I



1 don't, I'm not confident this is the same version of the  
2 story that I saw, but this seems to me the same as the  
3 passage in the version that I saw. But I am not confident  
4 that this is the same version that I relied upon in writing  
5 my report.

6 Q Okay. The second highlighted section says, his father  
7 encouraged him to start building up his credit record, said  
8 Jordan, whose last name is being withheld because he's a  
9 minor. That is what the second highlighted passage there  
10 says, correct?

11 A It does.

12 Q So this is an article about a minor who obtained a credit  
13 card with his father's knowledge. Is that correct?

14 A It is.

15 Q Professor Mann, in preparing this report, you didn't look  
16 for any other articles that discuss minors obtaining credit  
17 cards by providing false information, correct?

18 A That's true. Can I explain?

19 Q Counsel is welcome to bring it up on redirect, but I'm  
20 moving on.

21 THE COURT: Counsel will do that if he wants to.

22 Q And if we can go back to page 6 of your report, which is  
23 actually 0007. You have the section that talks about stolen  
24 card information. Is that correct?

25 A I do.





1 Q I'm sorry, I didn't hear your answer.

2 A I said, I do.

3 Q Now you don't know if there are any articles about stolen  
4 card information such as you described the problem in your  
5 report, correct?

6 A There is an immense amount of literature about stolen  
7 credit card information and unauthorized credit card  
8 transactions.

9 Q Okay, if we could bring up page 237 of your deposition  
10 testimony, line 4. I asked you, "did you find, are there any  
11 articles about stolen card information?" And you answered,  
12 "I don't know." That was your testimony, correct?

13 A I understood you to be asking a different question there  
14 than the one I understood you to ask today.

15 Q But that was your testimony at that time?

16 A Absolutely.

17 Q Thank you, Professor Mann. And you have no data on the  
18 number of minors that steal credit card information, correct?

19 A That is correct.

20 Q Now your statements about the possible use of stolen card  
21 information are based on the assumption that no purchase is  
22 required to access content and web sites, correct?

23 A No.

24 Q If we bring up page 238, line 7. I asked you, "when



1 stolen card information is used on the internet, isn't money  
2 taken?" And you answered, "not necessarily. The hypothesis  
3 suggests that suppose there is a site and access is  
4 conditioned on the possession of credit card information."  
5 And I asked you, "are there any such sites?" And you  
6 answered, "Yes." And I said, "could you give me an example?"  
7 And you answered, "There are adult consenting sites that you  
8 can't get into without typing in credit card information."  
9 That was your testimony, correct?

10 A Yes.

11 Q Can we turn back to Plaintiff's Exhibit 34, 0007, and  
12 highlight the bottom paragraph. You also have a paragraph  
13 about issuer error, correct?

14 A I do.

15 Q In this section you assert that because card issuers  
16 sometimes accidentally send card solicitations to infants,  
17 dogs or dead people, "there is some" - this goes to the next  
18 page - "there is some substantial number of minors that will  
19 have payment cards simply because the issuer offers the card  
20 by mistake and the minor accepts it." Is that correct?

21 A Yes.

22 Q Now, if we could bring up page 244 of your deposition,  
23 line 9. Now at line 9 I said, "and you say repeated stories  
24 of cards issued to infants, dogs and the deceased show the  
25 unreliability of Mr. Clark's assumption." And then you cite



1 two articles by Denver Channel.com and the Guardian. And  
2 then I asked, "can we mark the Denver Channel article as the  
3 next exhibit?" And you answered, "If I can clarify that,  
4 surely it should say that solicitations are sent, not cards  
5 issued." Is that correct?

6 A Yes.

7 Q And that is correct about your report. The report should  
8 say that solicitations were sent to infants, dogs and dead  
9 people, not that cards were issued to infants, dogs and dead  
10 people, correct?

11 A Can I explain what I mean by that?

12 Q Well first can you answer my question, yes or no?

13 A Well then I'll say no. I don't think that is an accurate  
14 description of what I said. But I'd be happy to explain it.

15 Q If we could bring up page, if we could bring up --

16 A I'd be delighted to explain what I said, but I don't  
17 think you are describing it accurately.

18 Q If we could bring up your, page 7 of your Plaintiff's  
19 Exhibit --

20 A P34, 0007.

21 Q Yes. And if we could zoom in on the issuer error on the  
22 bottom of the page again. Now you stated here, "there are  
23 repeated stories of cards issued to infants, dogs and the  
24 deceased show the unreliability of that assumption." So I  
25 was offering you an opportunity to explain that that was a



1 typo, if you will, but you meant to say, card solicitations.

2 Are you now saying that in fact cards were issued to infants,  
3 dogs and deceased people based on the articles?

4 A I'd be delighted to explain if you'd let me explain what  
5 I meant to say.

6 Q Proceed.

7 A The place where it says, cards issued, the first  
8 highlighted part. That should say, solicitations sent. That  
9 is correct. That is what I meant.

10 Q Okay. Just trying to confirm.

11 A And the third line of that paragraph.

12 Q Okay, so in support of this assertion, you cite three  
13 articles about card solicitations being accidentally sent to  
14 infants, dogs and dead people, correct?

15 A Yes.

16 Q Can we bring up what has been marked as Defendant's  
17 Exhibit 4-17. This is an article entitled, Babies Receiving  
18 Credit Card Applications from Denver Channel.com, correct?

19 A Yes.

20 Q This is one of the articles that you cited in your report  
21 on issuer error, correct?

22 A That is right.

23 Q Now the article nowhere mentions that the card issuer  
24 actually issued a card to the baby, is that correct?

25 A That is in fact correct.





1 Q Can we bring up what has been marked as Defendant's  
2 Exhibit 4-18.

3 A I think the 3-month-old probably didn't send the  
4 solicitation back.

5 Q Now this is an article entitled, Who Killed Richard  
6 Cullen?

7 THE COURT: Page number please?

8 MR. TODD: This is Defendant's Exhibit 4-18, your  
9 Honor.

10 THE COURT: I just need a page number.

11 MR. TODD: Page 1.

12 THE COURT: Thank you.

13 Q This is another article you cited in your report in  
14 support of your statement on issuer error, correct?

15 A Yes.

16 Q Now this is an article in a British Publication about a  
17 British card issuer accidentally sending a solicitation to a  
18 dead person on Britain. Is that correct?

19 A Yes, it is.

20 Q And it is your belief that this article supports your  
21 view that credit card issuers mistakenly send solicitations  
22 to people that are dead or to pets based on this article,  
23 correct?

24 A Yes. I do think the dead people rarely respond  
25 affirmatively to them.



1 Q Okay. Now, Professor Mann, you are not saying that if a  
2 solicitation is sent by a card issuer that a card is  
3 automatically issued just because someone returns the  
4 solicitation, are you?

5 A No.

6 Q Okay. And you cite no articles that say that cards  
7 issued were in fact issued to minors as a result to  
8 solicitations accidentally sent to minors. Is that correct?

9 A That is true.

10 Q And you have no data to quantify the number of card  
11 solicitations accidentally sent to minors, correct?

12 A That is what my report says.

13 Q And you have no data that shows these cards are actually  
14 issued to minors, correct?

15 A That is correct.

16 Q We can move along to the next page of your report.  
17 Section B on page 008. You have a section entitled,  
18 Enforcement of COPA Compliance by Visa and Mastercard,  
19 correct?

20 A I do.

21 Q Now, Professor Mann, when you wrote this section, you  
22 were assuming that COPA was unconstitutional, correct?

23 A I don't think I am an expert on the constitutionality of  
24 COPA. My impression is that the Supreme Court has not  
25 received it hospitably, but I am really not the expert on



1 that.

2 Q Okay. I am simply asking that when you wrote this  
3 section of the report, you were assuming that COPA was  
4 unconstitutional, correct?

5 A I don't recall having that assumption, but --

6 Q Sir, if we could bring up page --

7 A I generally, that's --

8 Q Bring up page 278, line 5, I asked you in reference to  
9 this section, "could you give me an example that relates to  
10 COPA? And you answered, "It is my understanding that there  
11 is under applicable law a lot of adult sensitive material  
12 that under First Amendment, the First Amendment is not lawful  
13 for Congress to proscribe the sale of that content because it  
14 is not in a relevant way obscene." And your answer  
15 continued, "And I am not an expert on the First Amendment,  
16 but there is a distinction between the things that Congress  
17 can ban and that is a category that includes child  
18 pornography properly defined." And your answer continued,  
19 "In the categories that Congress can't ban, the Child Online  
20 Protection Act is directed to categories that Congress cannot  
21 ban because if they, in my opinion from having worked at the  
22 department, if they could ban them, they would, but they  
23 can't. And so, the transactions are lawful because they  
24 can't be made unlawful, but they remain lawful." That was  
25 your testimony, correct?



1 A Mm-hmm.

2 Q Now, Professor Mann, the financial coalition against  
3 child pornography is something you mentioned in your report,  
4 is that correct?

5 A Yes.

6 Q Now the financial coalition is a coalition of internet  
7 service providers, card issuing and card acquiring banks, and  
8 law enforcement agencies. Is that correct?

9 A That sounds right.

10 Q Okay. But you haven't reviewed any documents to  
11 determine if any merchants have been terminated by the card  
12 companies for selling child pornography. Is that correct?

13 A I have not.

14 Q And you haven't talked with the coalition to find out if  
15 they have in fact terminated any merchants for selling child  
16 pornography. Is that correct?

17 A That is right.

18 Q Professor Mann, you didn't review the deposition of Ira  
19 Cadwell in preparation of your expert report, correct?

20 A That is true.

21 Q And you are not familiar with Visa's policies for high  
22 risk merchants, is that correct?

23 A I think that is, I think I'd probably disagree with that.

24 Q So did you cite those merchant agreements in your report?

25 A No, I did not.





1 Q Their policy?

2 A I did not.

3 Q Okay. And you are aware then that under these high risk  
4 policies, Visa requires either the card issuer or the  
5 internet payment service provider to review all the content  
6 on a high risk merchant's web page. Is that correct?

7 A I don't think that is correct actually.

8 Q If we can move on to page 10 of your report. This is a  
9 section of the COPA commission report. Is that correct?

10 A No.

11 Q This is a section about your analysis of the COPA  
12 commission report. Is that correct?

13 A Yes.

14 Q Okay. If we can look at the highlighted sentence,  
15 paragraph 1. It says, having said that, the commission is  
16 still correct that it is more difficult and inconvenient for  
17 adults to obtain those cards than it is for them to obtain  
18 conventional credit and debit cards. That's what this  
19 sentence says, correct?

20 A Yes.

21 Q Now can we bring up what has been marked as Plaintiff's  
22 Exhibit 6? This is the first page of the commission on child  
23 online protection, correct?

24 A I don't know. It could be, I mean --

25 MR. FRIEDMAN: Your Honor, can Mr. Todd provide the



1 witness with a copy of this document?

2 MR. TODD: I'm looking, your Honor.

3 THE COURT: See where you're going with it.

4 MR. TODD: Your Honor, I am not sure I have a paper  
5 copy, but to be clear, this is a document that has already  
6 been admitted into evidence, Plaintiff's Exhibit 6. And I am  
7 just asking him if this looks like the first page of the COPA  
8 commission report.

9 A This looks like what I would call the first page of the  
10 report to look like.

11 Q Okay, if we could turn to page 25. Oh, I think we are  
12 getting a copy of that now.

13 A Okay.

14 Q The Court's indulgence. Permission to approach the  
15 witness, your Honor?

16 THE COURT: Yes, indeed.

17 A Thanks very much.

18 THE COURT: What page are we going to?

19 Q We are going to page 0025.

20 THE COURT: Okay.

21 Q Now this is the section of the COPA commission report you  
22 were referring to when you wrote your report, is that  
23 correct?

24 A To tell the truth, no.

25 Q It is not the section you were referring to?



1 A No.

2 Q Can you show me what section you were referring to.

3 A I was referring to Mr. Clark's discussion, which is why I  
4 cited Mr. Clark's discussion.

5 Q Okay. Now you stated the commission is still correct, if  
6 we could go back to Plaintiff's Exhibit 34, page 10. We are  
7 going to come back to this in a minute. "The commission is  
8 still correct that it is more difficult and inconvenient for  
9 adults to obtain those cards than it is for them to obtain  
10 conventional credit and debit cards." That's what the  
11 sentence says, correct?

12 A Yes.

13 Q So could you show me in the COPA commission report where  
14 it talks about the difficulty of obtaining those cards, and I  
15 think by those cards you mean not conventional credit and  
16 debit cards?

17 A It is a paraphrase of the discussion of Mr. Clark's  
18 report at page, section 2.5, page 14, which is what I cited  
19 at the beginning of that paragraph. And I think if you  
20 looked at that page, it would be clear where I got the  
21 material that I am I'm sorry. I'm looking at the wrong,  
22 sorry, I'm looking at the wrong thing. Okay. If you look at  
23 page 21 of Mr. Clark's report, I think I will be clear what I  
24 am talking about. This is a paraphrase of his discussion on  
25 that page.



1 Q We are bringing up Mr. Clark's report. So this is the  
2 first page of Mr. Clark's report, which for the record is  
3 Defendant's 93. If we could turn to page, and I am going to  
4 guess is going to be 21, Mr. (indiscernible), but we might  
5 hunt around for it a little bit. If we can go to the next  
6 page. This is the section you were referring to? The  
7 highlighted sections of the COPA commission board?

8 A Yes, it is probably on the next page. This is page 20.

9 Q Okay, so we can go to the next page, Mr. Birdsong. And  
10 if you could highlight the box, the side by side part at the  
11 bottom. You say this is what you were referring to?

12 A This was what I am referring to.

13 Q Okay. Now can you show me where the COPA commission  
14 report said that it would be more difficult and inconvenient  
15 for adults to obtain those cards than it is for them to  
16 obtain conventional credit and debit cards?

17 A I am referring to the discussion, Mr. Clark has a quote  
18 here which purports to be a quote from page 25 to 26 of the  
19 COPA report, of the commission study which says it would make  
20 some content inaccessible to users without credit cards. And  
21 then he has his opinion in the paragraph on the right. This  
22 paragraph of my report is a summary of the things I said  
23 earlier intending to respond to his comparison from what he  
24 attributes as a quote to the commission study which is  
25 frankly somewhat difficult to find the quoted material in the





1 study.

2 Q Okay, let's go back to defendant's Plaintiff's Exhibit  
3 6, page 25. If you could highlight -

4 A It is in the third bullet under commentary. Okay.

5 Q So this section says, this system would make some content  
6 inaccessible to those users without credit cards, correct?  
7 But it doesn't talk about difficulty or inconvenience. Is  
8 that correct?

9 A That is right. It suggests that some people don't have  
10 credit cards. And my response in my report is that is still  
11 true.

12 Q But you have no data on the number of adults without  
13 credit cards, correct, in your report?

14 A My report does not cite any data about the number of  
15 adults without credit cards.

16 Q Okay. And your report has no estimate about the number  
17 of adults without credit cards, correct?

18 A That is true.

19 Q With the Court's indulgence, your Honor, if I may confer  
20 with counsel.

21 THE COURT: Sure.

22 (Pause.)

23 Q Your Honor, if I may, just to clarify for the record, in  
24 correspondence dated August 11, 2006, in a letter from Jeroen  
25 Van Kwawegen, I'm doing my best to pronounce it, to me, Mr.



1 Van Kwawegen said, please note that Professor Mann did not  
2 challenge the authenticity of documents used by defendant  
3 during this deposition. Rather, he was momentarily confused  
4 by the different formatting of the publicly available  
5 documents printed out by defendant. And the last paragraph  
6 says, because Professor Mann I'm sorry, strike that last  
7 sentence. So, just to clarify, Professor Mann, you are not  
8 challenging the authenticity of that article by Jolane Houtz.  
9 Is that correct?

10 A I don't remember how we decided what was right. I know  
11 when I came to the deposition with a copy of the thing I  
12 looked at and it was there, and that letter suggests that  
13 ultimately we decided it was the same in relevant respects.  
14 What I remember is the deposition when you showed me the  
15 thing and I couldn't find the thing that I had quoted and  
16 eventually the thing I had quoted turned out to be in your  
17 version, although it was difficult for me to find because it  
18 didn't look anything like the version I had used.

19 Q Okay, so you --

20 A That's what I remember. I remember us having a  
21 dispute...

22 THE COURT: Sounds like it is yes, he's not  
23 challenging.

24 Q The answer is yes.

25 A I'm not challenging it.



1 Q Thank you.

2 A Sorry.

3 Q No more questions for this witness, your Honor. Thank  
4 you very much. Thank you, Professor Mann, for your time.

5 A My pleasure.

6 Q Have a safe trip home.

7 A I will. This (indiscernible) people are doing a good  
8 job.

9 MR. FRIEDMAN: Yes, can I ask a few questions?

10 THE COURT: Redirect?

11 MR. FRIEDMAN: Yes.

12 REDIRECT EXAMINATION

13 BY MR. FRIEDMAN:

14 Q Professor Mann, in response to a question by Mr. Todd you  
15 indicated that you had not done any research in support of  
16 your report. Is that right?

17 A That is true.

18 Q Why is that the case?

19 A Because the way that you engaged me, you asked me if I  
20 had a view on some specific things, and I did, because they  
21 were things within the scope of what I regularly study. And  
22 so I didn't think it was incumbent on me to go out and  
23 collect any additional information because they struck me as  
24 in general, the two topics I addressed were things on which I  
25 had done a great deal of work in the past and had well-formed



1 opinions already.

2 Q Did you feel you need to do any additional research in  
3 order to reach the conclusions that are in your report?

4 A I did not.

5 Q May I ask the Court to switch the computer system over to  
6 plaintiffs.

7 A I was watching.

8 Q You should have the binder in front of you that contains  
9 Plaintiff's Exhibits. I ask you to turn to Plaintiff's  
10 Exhibit 93.

11 A You can.

12 Q In particular can you turn to page P93-0010.

13 A Yes.

14 Q I believe you have testified that it is your understanding  
15 that the numbers on these pages do not contain overlap, is  
16 that right?

17 A That's right.

18 Q Why is that your understanding?

19 A Because that is what it says in Mr. Clark's report. Mr.  
20 Clark reports that he interviewed the people at Teenage  
21 Research Unlimited and that in his report he simply states  
22 that there is no overlap as if that is what it says in the  
23 study, and that is on page 19 of his report in figure 3.6.1.  
24 And so I, since he was the one who talked to Teenage Research  
25 Unlimited people, I assumed he was being truthful and





1 accurate.

2 Q Can I ask you now to turn to tab 34 in that same binder.

3 A Okay.

4 Q And this is your report, is that right?

5 A Yes.

6 Q Okay, can you turn to page 234-0007.

7 A Okay, I've done that.

8 Q And do you see in the first few paragraphs there is a

9 reference to three articles, Cards International 2005,

10 Gosnell 2005, and Hawkins 2006?

11 A Yes.

12 Q Why do you cite Cards International 2005 for the

13 proposition that several of the pre-paid card products are

14 designed and marketed specifically for use by minors?

15 A Because that is what those articles were saying. Those

16 articles talk about firm and Visa bucks products. When I

17 testified this morning I was talking about the parent

18 compliant, parent cooperative, I guess is the term I used,

19 pre-paid cards. That is what is discussed in these in the

20 Cards International and Gosnell things. And those are

21 pre-paid card products that target minors.

22 Q Do these relate at all to your discussion of net spend

23 and the payroll cards?

24 A No. That is a different, those are different kinds of

25 products.



1 Q How about the Gosnell article 2005? Why do you cite to  
2 this article in connection with your opinion that pre-paid  
3 card products, several of them are designed and marketed  
4 specifically for use by minors?

5 A The Gosnell one is very similar. I think that is one of  
6 the articles about the JP Morgan Chase firm parked on the  
7 Visa bucks card.

8 Q And does this relate at all to your discussion of payroll  
9 cards and the other reloadable pre-paid cards, such as net  
10 spend?

11 A I don't think there is any substantial discussion of  
12 those in the Gosnell article.

13 Q You also cite to your book, Charging Ahead, in this  
14 report. Is that right?

15 A I do.

16 Q And I know we have cleared it up that you meant to cite  
17 to chapter 13 of that book?

18 A Yes.

19 Q And why do you cite to that chapter of the book?

20 A Because that is the chapter where I talk about, you know,  
21 the policy concern of having credit cards marketed to minors.  
22 And that part of the book calls for a ban on marketing credit  
23 cards to minors reflecting my view that that is a serious  
24 social problem that should be eradicated.

25 Q And do you also cite to a chapter of a book by Professor



1 Manning?

2 A I do.

3 Q Why do you cite to that chapter of his book?

4 A Because Professor Manning is the person who has spent  
5 more of his career studying marketing of cards to college  
6 students and youth and that is the chapter of his book that  
7 particularly talks about marketing to college students and  
8 motivations for getting cards in the hands of college  
9 students at the time he wrote that book, almost 10 years ago  
10 now, or very similar to motivations that attract people to  
11 try to get cards in the hands of children now.

12 Q In the questioning by Mr. Todd you had the opportunity to  
13 look at a document that purports to be the all access card  
14 terms and conditions. Do you recall?

15 A Right.

16 Q And you also looked at a document that were the  
17 frequently asked conditions for the all access card? I'm  
18 sorry, the frequently asked questions for the all access  
19 card?

20 A Yes, absolutely.

21 Q Do you recall whether in the frequently asked questions  
22 it indicated a requirement that the individuals seeking to  
23 get the card be 17 or older?

24 A It didn't. It indicated that they wanted to collect the  
25 information apparently to comply with the Patriot Act, which



1 is distinct from saying that people have to be a particular  
2 age. It means they have to state what their birth date is.

3 Q After seeing what the terms and conditions and the  
4 frequently asked questions, does that have, does that change  
5 your opinion as to whether or not children are able to obtain  
6 net spend cards?

7 A Not at all.

8 Q Why is that?

9 A Because I have no reason to think that the policy affects  
10 the cards that they issue. Having a formal written policy  
11 that no cardholder would ever see is one thing. Deciding  
12 that you are going to try keep children from getting a card  
13 is a very different thing. And since their business model is  
14 to try and market their cards to children I am more willing  
15 to believe that their marketing reflects what they are trying  
16 to do than the documents that they have on their website that  
17 customers never see.

18 MR. FRIEDMAN: I'm sorry, your Honor. Could I just  
19 have one moment to confer with counsel?

20 THE COURT: Sure. Mr. Todd, my apologies. I  
21 referred to you as Mr. Dobbs.

22 MR. TODD: That's okay, your Honor. I've been  
23 called plenty worse.

24 (Laughter.)

25 (Pause.)





1           MR. FRIEDMAN: I have no further questions of  
2 Professor Mann. Thank you, your Honor.

3           THE COURT: Any recross?

4           MR. TODD: Yes, your Honor, and I apologize. I hope  
5 it is just one question on recross, but you know how  
6 sometimes that is.

7           THE COURT: You have 2.5 questions.

8           MR. TODD: Yes.

9                                   REXCROSS-EXAMINATION

10          BY MR. TODD:

11          Q    If we could bring up Plaintiff's Exhibit --

12          A    I'll try to say yes or no.

13          Q    There you go. Plaintiff's Exhibit 34, page 0007 again.

14          The paragraph with the three article cites on Cards  
15          International, Gosnell and Hawkins.

16                THE COURT: First full paragraph on page 00007.

17          Q    Yes, your Honor and thank you, your Honor for clarifying  
18          that for the record. Now these are articles that talk about  
19          marketing cards to children, correct?

20          A    Yes.

21          Q    Okay. Sorry. That is the 2. The record will show that  
22          was already one question.

23                               (Laughter.)

24          Q    But these, none of these articles show that children  
25          obtained payment cards without their parents knowledge.



1 Isn't that correct?

2 A Yes.

3 Q Thank you. No more questions.

4 THE COURT: You got a half a question in the back.  
5 You are excused, sir. Be careful getting down.

6 THE WITNESS: Hmm?

7 THE COURT: Be careful getting down. If the papers  
8 aren't yours, just leave them behind and let the lawyers mess  
9 around with them.

10 MR. TODD: Your Honor, if I may, the defendant at  
11 this time moves to strike the expert testimony of Professor  
12 Ronald J. Mann for failure to comply with the standards of  
13 technical expertise set forth most clearly by the Supreme  
14 Court in GE v. Joiner, in that Professor Mann's expert report  
15 does not rise to the level required by an expert document  
16 prepared in the field because he did no independent research  
17 for the document. And there is more specific law for that  
18 proposition, but I do not have it, directly on that point,  
19 but I do not have it at my fingertips, and I apologize to  
20 your Honor.

21 THE COURT: Is that the only reason you are stating  
22 now?

23 MR. TODD: The reason I am stating is that he --

24 THE COURT: I heard you. The only reason you is all  
25 I want your finished?



1           MR. TODD: That is the only reason that defendant is  
2 moving at this time, your Honor.

3           THE COURT: Motion is overruled. For anybody who  
4 wants to look at this record, he has testified that he did no  
5 research because the knowledge that he needed to write his  
6 report was already within his prior research reports and  
7 knowledge that he already had. That is his reason. I  
8 haven't read those cases recently, but I doubt that they say  
9 one has to do research when one has already done the  
10 research. I am not accepting the testimony as credible or  
11 weighty or anything. I am just making a legal analysis,  
12 okay? Next witness for the Plaintiffs?

13           MR. HANSEN: Your Honor, we have another deposition  
14 designation which I think we can finish before 4:30. The  
15 Discover deposition, the Discover Card deposition.

16           THE COURT: Okay. Have we worked out any problems  
17 with confidentiality with Discovery, if there were any?

18           MR. HANSEN: We have, your Honor. There are no  
19 confidentiality problems.

20           UNIDENTIFIED SPEAKER: Bear with me. I have to get  
21 rid of the defense exhibits here.

22           MR. VAN KWAWEGEN: In the meantime, your Honor, with  
23 your approval, may I approach Ms. Marshal and give her her  
24 copy?

25           THE COURT: That would be important.



1           MR. VAN KAWEGEN: We also have a full copy with the  
2 color coded designations for your Honor, with your  
3 permission.

4           THE COURT: Sure.

5           MR. VAN KAWEGEN: That's not promising. This one  
6 may go quickly, your Honor.

7           THE COURT: I've been looking for this one.

8           (Laughter.)

9           MR. VAN KAWEGEN: Unfortunately, your Honor, there  
10 is one more left and that one is a little thicker.

11          THE COURT: Awww.

12          (Laughter.)

13          THE COURT: I didn't have any time to have any  
14 euphoria.

15          MR. VAN KAWEGEN: Your Honor, the deposition that  
16 we just handed to you is the deposition of Patricia M.  
17 Rinchiuso, R-i-n-c-h-i-u-s-o. This deposition took place on  
18 March 7, 2006 and Ms. Rinchiuso is the director of systems  
19 management at Discover.

20          THE COURT: Ms. Marshall, welcome back.

21          MS. MARSHALL: Thank you.

22          THE COURT: Okay. You may proceed.

23          MR. VAN KAWEGEN: The first designation is on page  
24 9, lines 5 through 18, designated by plaintiffs:

25          Q    What is an authorized buyer?





1 A A person who has approved access to use the account by  
2 the primary cardholder.

3 Q And what, if any, information about authorized users does  
4 Discover collect?

5 A Their name.

6 Q Only their name?

7 A Generally speaking, yes.

8 Q Are there any restrictions based on age for authorized  
9 users of Discover credit cards?

10 A Not to my knowledge, no.

11 Q Can parents authorize their children to use credit cards?

12 A Yes.

13 MR. VAN KWAWEGEN: The next designation, your Honor,  
14 is on page 10, lines 21 through page 11, line 13, designated  
15 by plaintiffs. Defendant has stated an objection to the  
16 first three lines.

17 THE COURT: Defense argument?

18 MS. ULRICH: The defendant's objection on page 10,  
19 line 21 through 23 is that the answer is speculative. It is  
20 clear from the answer that is given there is no knowledge to  
21 answer that question.

22 THE COURT: Any response?

23 MR. VAN KWAWEGEN: Your Honor, this is the director  
24 of systems management at Discover. I think that the way she  
25 responded does not necessarily indicate that it was



1 speculative as the rest of the testimony will also show. And  
2 when I say the rest of the testimony, I actually mean reading  
3 on on page 10 through page 11, the designations there.

4 THE COURT: Let me read it to myself. Excuse me.

5 (Pause.)

6 THE COURT: The objection is sustained. It is  
7 speculative. It is not quite the same as the rest of the  
8 testimony.

9 MR. VAN KWAWEGEN: The next designation that will be  
10 read will be page 10, line 24 through page 11, line 13,  
11 designated by plaintiffs.

12 Q And are you aware of whether credit card information is  
13 bought and sold online? You can answer if you understand it.

14 A I don't have personal knowledge of it, but...

15 Q Okay, so when a person uses a Discovery credit card, that  
16 person might be under 18. Is that correct?

17 A Yes.

18 Q So in your view, is use of a credit card good proof that  
19 a person is 18 or older?

20 A No.

21 MR. VAN KWAWEGEN: The next designation is  
22 designated by the defendant. It is on page 20, lines 5  
23 through 24. So lines 5 through line 24.

24 Q I'll ask you the question, what do you understand the  
25 word issue to mean vis-a-vis credit cards that come from your



1 company?

2 A I understand the word issue to mean the person that is  
3 responsible for the repayment of that card.

4 Q Under what circumstances does your company issue credit  
5 cards that someone under 17 may have?

6 A At the request of the primary or secondary cardholder on  
7 the account.

8 Q What do you mean by the primary cardholder on the  
9 account? Who are you referring to?

10 A The person who is responsible for the repayment on the  
11 account.

12 Q What do you mean by the secondary person on the account?

13 A The joint cardholder who is also responsible for the  
14 repayment on the account.

15 MR. VAN KWAWEGEN: The next section was designated  
16 by the plaintiffs. It is on page 24, line 14 through page  
17 25, line 14.

18 Q What is the youngest an authorized buyer may be?

19 A I have no way of knowing that.

20 Q Doesn't your company have a policy concerning the  
21 youngest an authorized buyer may be who uses a credit card?

22 A No.

23 Q Do you mean to say then that an authorized buyer upon  
24 request of a 20-year-old parent can be a 5-year-old?

25 A I am no aware of a specific requirement regarding



1 authorized buyers and their age.

2 Q Does that mean that there is no requirement for a minimum  
3 age of an authorized buyer?

4 A I have not seen a document requirement for a specific  
5 age, no.

6 Q Is it fair to say that if there were a written policy  
7 concerning a minimum age of an authorized buyer, you would  
8 know of it?

9 A Yes.

10 MR. VAN KWAWEGEN: The next section is designated by  
11 the defendant is page 25, line 15, through page 26, line 9.  
12 The objection was waived, your Honor.

13 THE COURT: It was waived?

14 MR. VAN KWAWEGEN: Yes.

15 THE COURT: Thank you.

16 Q Why doesn't Discover issue credit cards to persons under  
17 age 17?

18 A I don't know the answer to that question. It is not our  
19 policy to do so.

20 Q Are you saying you have no idea why it is your policy not  
21 to issue credit cards to persons under age 17?

22 A It wouldn't be appropriate for me to speculate as to what  
23 that reason is.

24 Q I am not asking you to speculate. I am asking you, are  
25 you saying you have no idea why your company does not issue





1 credit cards to persons under 17?

2 A Our policy is not to issue credit cards to people under  
3 the age of 17.

4 Q Do you have any idea what the basis of that policy is?

5 A We cannot hold them legally responsible under the age of  
6 18.

7 MR. VAN KWAWEGEN: The next section was designated  
8 by the defendant. It is on page 30, line 16 through line 23.  
9 The objection was waived.

10 Q Directing your attention now to children under the age 18  
11 and the company's policies in that regard. What are the  
12 company's policies regarding the ages of persons to whom it  
13 may issue credit cards?

14 A We don't issue credit cards when an individual is a  
15 primary or secondary to persons under the age of 18.

16 MR. VAN KWAWEGEN: The next section was designated  
17 by the plaintiffs. It is on page 45, lines 18 through 24.

18 Q You stated that the minimum transaction amount was 1  
19 cent. Was that correct?

20 A Yes.

21 Q Would Discover permit a merchant to operate a business  
22 with only 1 cent transactions?

23 A No. The requirement is the request for the actual dollar  
24 amount of the transaction.

25 MR. VAN KWAWEGEN: That concludes this deposition,



1 your Honor. There are no documents or exhibits.

2 THE COURT: Thank you. That concludes the  
3 deposition of the Discover representative. Do you want to  
4 start the other one or not?

5 MR. HANSEN: There are two other loose ends that  
6 we could I think use the next ten minutes to cover and then  
7 we can move with these the first thing in the morning, if  
8 that is acceptable to the Court.

9 THE COURT: Well, it will be more robustly attended  
10 to by all concerned.

11 MR. HANSEN: That was my theory too, your Honor.  
12 The first loose end I think that we need to cover, your  
13 Honor, is the plaintiffs have some additional exhibits we'd  
14 like to introduce that are not being introduced through a  
15 witness. I have a copy of those exhibits for the Court in  
16 case there is objections to them. First, your Honor,  
17 plaintiffs move into evidence Plaintiff's Exhibit 55.  
18 Plaintiff's Exhibit 55 is a letter from the Department of  
19 Justice to the Honorable Thomas Wiley, chairman of the  
20 committee on commerce in the U.S. House of Representatives.  
21 It is a letter written by DOJ while Congress was considering  
22 the passage of COPA and expresses the Department of Justice's  
23 then view on COPA.

24 THE COURT: Any objection?

25 MS. ULRICH: No objection, your Honor.



1           THE COURT: Plaintiff's 55 is received into  
2 evidence.

3           (Plaintiff's Exhibit 55 was received into evidence.)

4           MR. HANSEN: The next category of exhibits, your  
5 Honor, include exhibits, Plaintiff's Exhibits 43, 44, 45, 46,  
6 and 118. These exhibits represent selected pages from the  
7 web sites of plaintiff's in this case who are not testifying.  
8 Plaintiff's Exhibit 43 is selected pages from the web site of  
9 Patricia Nell Warren. Ms. Warren is a member of the ACLU  
10 identified as a plaintiff in this case. Plaintiff Exhibit 44  
11 are selected pages from the free speech network, which is a  
12 plaintiff. Plaintiff's Exhibit 45 are pages from the  
13 Philadelphia Gay News, which is a plaintiff. Plaintiff's  
14 Exhibit 46 are pages from Powell's Book Store, which is a  
15 plaintiff. Plaintiff's Exhibit 118 are pages from the web  
16 site of Bill Bushka. Mr. Bushka is a member of the  
17 Electronic Frontier Foundation, which is a plaintiff.  
18 Plaintiffs move into evidence those exhibits.

19           THE COURT: Any objection?

20           MS. ULRICH: Yes, your Honor. Defendant has  
21 objections to all of these. It is the same objection, so I  
22 will just treat them all collectively. Defendant objects  
23 under rule 403 that the prejudice outweighs the probative  
24 value. These are exhibits as Plaintiff's counsel has  
25 (indiscernible) select web pages from plaintiff's web sites



1 who are not testifying here today. We do not have any  
2 testimony at all from these plaintiffs at trial. Presumable  
3 these go towards the fear of prosecution. However, we have  
4 no testimony about the fear of prosecution or timed that in  
5 any way to these web pages. The defendant has had no  
6 opportunity at all to cross-examine the witnesses regarding  
7 these documents that the plaintiffs now want in evidence.  
8 Nor is there any indication that these selected pages are  
9 representative of the plaintiff's web site. There has been  
10 no testimony at trial about what these web sites are or the  
11 context of these pages for the web site. So we do believe  
12 that without being attached to any live witness testimony,  
13 these web pages should not be admitted into evidence.

14 THE COURT: Plaintiff's response?

15 MR. HANSEN: With respect to the defendant's  
16 inability to cross-examine, your Honor, these people have  
17 been plaintiffs in the case since the amended complaint. The  
18 defendants had full opportunity to depose them if they chose  
19 to. In addition, the defendant served interrogatories on all  
20 of the plaintiffs asking the plaintiffs for sample pages that  
21 they thought placed them at risk. These are the pages that  
22 the plaintiffs identified so they've had them, the defendants  
23 have had these pages for literally months and months and  
24 months as examples that the plaintiffs through potentially  
25 they were placed at risk. There is also a certain irony to





1 defendant's objection that they don't have an ability to  
2 cross these witnesses since their objection. But most of the  
3 witnesses thus far has been cumulative . Our point of course  
4 is to introduce these as exhibits rather than bringing  
5 neutral witnesses in was to avoid further cumulativeness.  
6 With respect to the defendant's argument about representing  
7 that these pages may or may not be representative of the web  
8 site as a whole, I don't think that is a relevant objection.  
9 The issue under COPA is not whether the pages are relevant,  
10 but whether if the pages exist on the website and whether  
11 they, the issue is no whether they have a representative.  
12 The issue is whether the pages are on the web sites and  
13 whether they present a reasonable fear of prosecution. In  
14 that respect the documents can be compared to other documents  
15 that have been introduced in the case to determine whether  
16 they are a similar type to the other documents that have  
17 already been introduced, and that way we can establish  
18 whether or not the fear of prosecution is reasonable or not.  
19 For those reasons we think it is appropriate to introduce  
20 these exhibits, even if no particular witness testifies.

21 THE COURT: Just a minute, please, Ms. Ulrich. Mr.  
22 Hansen, are you, what are you offering to prove by the  
23 document thing? I heard some reference to fear of  
24 prosecution, but I can make a formal statement as to what you  
25 expect to prove by the document.



1           MR. HANSEN: The first reason they are being  
2 offered is that these are in fact the speech that plaintiffs,  
3 these particular plaintiffs, engage in on the internet. If,  
4 once that proposition is accepted, plaintiffs can compare  
5 these to documents that have already been introduced into  
6 evidence that about which these witness testified they have a  
7 reasonable fear of prosecution. Comparing the two, it would  
8 be I think self-evident that if the documents about which  
9 there has already been testimony about reasonable fear of  
10 prosecution are compared to these documents, then these  
11 documents would also form the basis for reasonable fear of  
12 prosecution.

13           THE COURT: All right, Ms. Ulrich, wait a minute.  
14 I'm not finished with Mr. Hansen yet. Sorry. Are you clear  
15 that the documents attached to each of these exhibits, 43,  
16 44, 45, 46, and 118 are the very documents that were provided  
17 during discovery to the defendant?

18           MR. HANSEN: I believe them to be so. I would have  
19 to double check to be 100 percent sure, your Honor. I am  
20 nervous about representing the Court. If they are identical,  
21 I can certainly check that over night. But I believe that to  
22 be the case.

23           THE COURT: You implied that on your earlier  
24 argument.

25           MR. HANSEN: I did. Yeah and I was trying to imply



1 it without stating it authoritatively because I wasn't 100  
2 percent sure and I thought we had it.

3 THE COURT: That is why I asked the question.

4 MR. HANSEN: I understand completely, your Honor. I  
5 believe them to be, but I haven't personally verified it  
6 myself since the interrogatories went it.

7 THE COURT: Well I don't hear any argument on the  
8 issue of authenticity. The question is whether these are  
9 representative in other reasons.

10 MS. ULRICH: Your Honor, we are not objecting that  
11 these are not unauthenticity. You know, we do believe these  
12 have been printed out from the plaintiff's web site. That is  
13 not the basis. As to your last questions to Mr. Hansen, I  
14 believe I can answer that. And I can tell you that for fear  
15 of prosecution, plaintiffs provided no documents to the  
16 defendant during discovery. These are not identical to  
17 documents that were provided to defendant. Instead, the  
18 plaintiff answered an interrogatory response about fear of  
19 prosecution and left it for the defendant to figure out where  
20 those web pages were. Sometimes they were stated in very  
21 general terms in that I fear prosecution on my whole web  
22 site. Sometimes they were specific. So these are exhibits,  
23 the trial exhibits that the plaintiffs exchanged just before  
24 trial to the defendant. This is the first opportunity that  
25 the defendant has had to see these trial exhibits. This



1 point also goes to the ability to cross-examine. Obviously  
2 during discovery we did not have these documents in front of  
3 us. These were not provided as documents to us and we could  
4 not cross-examine on these documents. More, without a  
5 witness not present at trial would we have been able to do a  
6 cross-examination before the trier of fact, which would be  
7 necessary for that to be fair to the defendant. And as a  
8 further point, these exhibits on their own are meaningless  
9 without the testimony of the plaintiffs themselves seeking to  
10 put these in. There is no context and I believe Mr. Hansen  
11 said what he would expect the Court to do is to compare these  
12 pages with other plaintiff's testimony about other  
13 plaintiff's fear of prosecution under COPA. Well that, you  
14 Honor, the defendant contends is meaningless for the  
15 plaintiff that are absent at trial. Each plaintiff must  
16 state his or her own fear of prosecution under COPA and  
17 cannot bootstrap that by just simply submitting documents and  
18 saying, well, we rely on testimony on other people. We do  
19 not have that testimony at trial.

20 THE COURT: Thank you. It is rather quixotic that  
21 the defendant of course knew the names of these plaintiff  
22 about whom these reports are being offered, or the web site  
23 examples are being offered ever since the amended complaint  
24 was filed, and of course had the right to take their  
25 depositions at any time during discovery that they wanted to.





1 And there being no requirement of disclosing names of  
2 witnesses except those procedural facts that are set forth in  
3 a recent order of this Court. I'm not so concerned about the  
4 inability to cross-examine. I think defendant had that  
5 opportunity if they had wanted to have done it. I am going  
6 to take this motion or offer under advisement and I'll rule  
7 on it soon.

8 MR. HANSEN: Your Honor, the next two exhibits and  
9 the last two exhibits that we discussed this afternoon are  
10 exhibits 2 and 13. Exhibit 2 is Dr. Craner's expert witness  
11 report. Exhibit 13 is Dr. Felton's expert witness report.  
12 As your Honor will recall when both witnesses testified there  
13 was still some remaining confidentiality problems with  
14 respect to references contained in their expert witness  
15 reports. And we deferred the issue of admitting their expert  
16 reports until such time as those problems were solved. Those  
17 problems have been completely solved with Dr. Craner and so  
18 her expert report is now, it is now possible without raising  
19 any confidentiality problems to have her report admitted.

20 THE COURT: Does Government have any confidentiality  
21 problems brought to their attention in Craner's report?

22 MS. ULRICH: No, your Honor.

23 THE COURT: Or they were resolved, one or the other.

24 MS. ULRICH: We don't have any issue I think with  
25 either of these two, Exhibit 2 and Exhibit 13. We have not



1    been, I think each side has been doing its own  
2    confidentiality negotiations. We have not been engaged in  
3    confidentiality discussions with the matter the plaintiff  
4    wishes to bring, so I have no reason to question Mr. Hansen's  
5    representation that the submission was on those  
6    confidentiality issues.

7           THE COURT: Does it require any redaction or how is  
8    it handled?

9           MR. HANSEN: Dr. Craner's did not require any  
10   redaction. Dr. Felton's required some very minor redaction  
11   in the copy we have given you and have given includes that  
12   redaction.

13           THE COURT: Right. Plaintiff's 2 and Plaintiff's 13  
14   are received into evidence.

15           (Plaintiff's Exhibits 2 and 13 were received into  
16   evidence.)

17           MR. HANSEN: The only other issue, your Honor, this  
18   afternoon is the issue of the introduction of the preliminary  
19   injunction testimony. Your Honor will recall we submitted a  
20   letter near --

21           THE COURT: Yes.

22           MR. HANSEN: -- the end of last week about that  
23   issue. That is just an issue that needs to be resolved.

24           THE COURT: I didn't ask the defense for a response,  
25   but I would like to do that or receive one you have prepared



1 already.

2 MR. GOMEZ: Your Honor, I apologize. We were  
3 trying, we were going to try to --

4 THE COURT: Come on up to the microphone please. I  
5 can't pick up your voice while you are walking.

6 MR. GOMEZ: I'm sorry.

7 THE COURT: Okay, I now have a response from the  
8 Government and I have to compare them and see what I'd like  
9 to do about it. My best guess is we will have an opportunity  
10 to go over this tomorrow afternoon at 4:30. I'd like to hear  
11 from the parties probably. I've read enough of the  
12 plaintiff's offer that I know that defense would have some  
13 problems and I want to make sure I have all of the details  
14 necessary to make a decision. Anything else, Mr. Hansen?

15 MR. HANSEN: No, the only other thing is that  
16 plaintiffs only have one further thing to do before our case  
17 is over and that is to read the Visa deposition tomorrow  
18 morning.

19 THE COURT: And you want to get the issue, these two  
20 issues that I took under advisement now resolved.

21 MR. HANSEN: Yes, that is correct.

22 THE COURT: Okay. And then, do you want to set  
23 aside some time for a rule 50 motion? Or is it going to be,  
24 and I mean no disrespect. Is it going to be pro forma?

25 MR. GOMEZ: It will be short, your Honor.



1 THE COURT: Okay. I'm not disappointed in anything.  
2 I just need to know whether we need to set some time aside.  
3 Mr. Gonzales, anything else on your mind, sir?

4 MR. GOMEZ: Just to identify that the witness, just  
5 so we are clear, the witness that the defendant will first  
6 call in this case in chief will be Paul Newitt (ph) and the  
7 exhibits that the defendant would use with Mr. Newitt are  
8 Defendant's Exhibit 82 through 90. So it is 82, 83, 84, 85,  
9 86, 87, 88, 89 and 90 of defendant's trial exhibits. And  
10 there are three demonstrative exhibits which we have provided  
11 for the plaintiffs, your Honor.

12 THE COURT: Did you, are they among the  
13 demonstrative exhibits that you gave me before trial, do you  
14 think? Pardon?

15 MR. GOMEZ: No, your Honor. We have, I don't  
16 believe we have provided, excuse me a minute. No, these are  
17 demonstrative exhibits that we have not provided the Court.

18 THE COURT: And are they charts or something like  
19 that?

20 MR. GOMEZ: They are just charts and we could  
21 provide the copy I have here now if you would like, your  
22 Honor.

23 THE COURT: I just need, no, if they are --

24 MR. GOMEZ: They are basically just --

25 THE COURT: Charts or articles?





1           MR. GOMEZ: Charts and there are no pictures or  
2 anything like that.

3           THE COURT: Okay.

4           MR. GOMEZ: Oh, excuse me, your Honor. Well, your  
5 Honor, there are no pictures of persons, are they? Your  
6 Honor, I think it would be simpler if this --

7           THE COURT: Wait until you talk into the microphone.  
8 No, I don't need them right now. I just want to make sure  
9 the plaintiffs have them.

10          MR. GOMEZ: They have them.

11          THE COURT: All right. You can hand them to me when  
12 the witness is presented.

13          MR. GOMEZ: Yes, your Honor.

14          THE COURT: All right. Is that deposition, the  
15 deposition we still have left, does that have a group of  
16 exhibits that go with it?

17          MR. VAN KWAWEGEN: Yes, your Honor.

18          THE COURT: And the defendant knows about those  
19 exhibits and you are prepared to argue them as we go along?

20          MR. VAN KWAWEGEN: Yes, your Honor.

21          THE COURT: Okay. We'll be back tomorrow morning at  
22 9:30. Thank you very much. The court day is concluded.  
23 Counsel are excused and we are off the record.

24                 (Proceedings concluded at 4:38 o'clock p.m.)



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