

# Consumer Finance Monitor (Season 5, Episode 28): A Close Look at the Justice Department's Settlement with Meta (Formerly Facebook) to Resolve Alleged Fair Housing Act Violations Arising from Meta's Targeted Advertising System

Speakers: Alan Kaplinsky and Rich Andreano

Alan Kaplinsky:

Welcome to Consumer Finance Monitor podcast, where we explore important new developments in the world of consumer finance and what they mean to industry and to consumers. I'm Alan Kaplinsky, the host of the show today. I'm senior counsel at Ballard Spahr, and I'm formerly the chair of the Consumer Financial Services Group at Ballard Spahr.

Alan Kaplinsky:

We're going to be talking about a very important topic today. On June 21 of this year, not so long ago, the Justice Department announced a settlement with Meta, which is more frequently still called Facebook, even though they changed their formal name to Meta a while back. And we're going to talk about the settlement with Facebook to resolve alleged Fair Housing Act violations arising from Facebook's targeted advertising system where they were advertising the availability of mortgage loans.

Alan Kaplinsky:

And I can't think of anybody more qualified to discuss that topic than our guest today. And our guest today is Rich Andreano. Rich is based in our DC office. He's the practice group leader of Ballard's Mortgage Banking Group. He's the leader of our Fair Lending Team. And he is a member of our Consumer Financial Services Group. He has devoted over 35 years of practice to mortgage banking and consumer finance law, and he assists mortgage and settlement service industries on a wide range of regulatory, compliance and related matters. And apropos, our topic today, he has done a lot of work in this area of targeted marketing, online targeted marketing. So Rich, very warm welcome to you today.

Rich Andreano:

Thank you very much, Alan. Glad to be here and welcome to everyone who's listening to our podcast.

Alan Kaplinsky:

Okay. Let's get into it, Rich. And this settlement, as I mentioned in my introduction, was signed on June 21. And there's quite a bit of background associated with the settlement. It's not something that just happened. There's a history here. And I'm wondering if you could give us some of that background which led up to the filing, simultaneous filing of a complaint along with a settlement agreement.

Rich Andreano:

Sure. Glad to do that. And as Alan noted, that technically the name of the entity involved is Meta Platforms, the new name for Facebook. But because no one knows that name, we're going to refer to Facebook because everyone understands who Facebook is.

Rich Andreano:

This goes back to August of 2018 where the then HUD Assistant Secretary for Fair Housing and Equal Opportunity filed a complaint with HUD alleging that Facebook's ad delivery system violated the Fair Housing Act. Now, I know a lot of people said, "Well, wait a minute, did HUD just file a complaint with HUD?" And I said, "Yes, that's actually exactly what happened." Under the Fair Housing Act, private parties have the ability to file a complaint with HUD under the Fair Housing Act. But HUD has the authority to self-initiate a complaint. And then once a complaint is filed, whether by a private party or HUD itself, HUD then conducts an investigation, which is what it did following the filing of the complaint against Facebook.

Rich Andreano:

If we fast forward to March of 2019, then the HUD Secretary issued a charge of discrimination under the Fair Housing Act alleging that Facebook had in fact engaged in a discriminatory housing practice in violation of Fair Housing Act. Now, what that means when the HUD files a charge of discrimination, it is determined that there's a reasonable cause to believe that a discriminatory housing practice exists under the Fair Housing Act.

Rich Andreano:

Now, at this point, you can go one of two paths. That charge can be handled in an administrative matter under the act, or the respondent, being Facebook, could choose to go into federal court. It decided to go into federal court and also agreed to delay the time that the Justice Department would have to file a complaint. That time was delayed till June 21 of this year. And as Alan noted in the intro, that is in fact the date that DOJ filed the complaint. It waited till the last date it could under the agreement with Facebook. And that's how we got to where we are now. Then the filing of the complaint and the proposed settlement.

Alan Kaplinsky:

And Rich, where was it? What federal court was it filed in? Do you know?

Rich Andreano:

Yeah, it was at the Southern District of New York.

Alan Kaplinsky:

New York. Yeah.

Rich Andreano:

Southern District of New York. Right. And that's where in fact a lot of the HUD testing, DOJ testing during the assessment process was using areas in the Southern District of New York, which is in the end why they filed the complaint there.

Alan Kaplinsky:

Right. Got it. And what is the basic focus of the complaint? What does it deal with?

Rich Andreano:

What the government alleges is that if Facebook either using actual data it had on prohibited based characteristics of its users or information that effectively served as close proxies for prohibited bases, it used those to help advertisers determine which Facebook users would and would not receive housing advertisements from various advertisers using the Facebook system.

Rich Andreano:

Now, just a refresher, the prohibited bases under the Fair Housing Act a little different from Equal Credit Opportunity, although there is a lot of overlap. It's race, color, religion, sex, familial status, national origin, and handicap. The government

often uses disability to refer to handicap. But those are the prohibited bases. And in general, what DOJ said was Facebook was engaged in trait-based advertising and that one or more of the traits would include a prohibited Fair Housing Act bases. That's the basis of the complaint. But it then notes three specific types of advertising methodologies that it alleged Facebook engaged in and used prohibited basis characteristics in this.

Rich Andreano:

Now, Facebook we know has a lot of data on its users collected through various means. One is very direct, the user provides Facebook with the information. For instance, to obtain a user profile, one has to provide Facebook with their sex or preferred gender pronoun. So right away, Facebook knows most likely the specs of the individual. Then the profiles may include a photo, religious views or affiliations, family members, and relationship status. That actually touches on a number of prohibited bases.

Rich Andreano:

But then, as you know, Facebook has many groups. And a lot of these groups that you belong to can signify that you're probably a member of one or more prohibited basis classes. Here's some examples that the complaint sites to. Though it has a very long list, I'll do just an abbreviated list. Single Black Mothers, Asian Single Women, United Latino Professionals, Jewish Americans, United Muslims, Mothers of Young Children, Parents with Toddlers Support Group, Parents in Wheelchairs, and Persons with Disabilities. So clearly, those groups would reflect one or more prohibited basis characteristics.

Alan Kaplinsky:

What you're saying is they would do this targeted advertising and exclude people who were members of some of these Facebook groups?

Rich Andreano:

Yes, that's specifically what the government alleges through three different approaches. An advertiser, with Facebook's assistance is the allegation, could see that only certain people saw an advertisement, meaning certain people were specifically excluded from seeing that advertisement and that one or more prohibited bases factored into that decision-making. Therein lies the Fair Housing Act issue.

Alan Kaplinsky:

Was the problem more with the exclusions that Facebook was making as opposed to inclusions?

Rich Andreano:

It's the exclusion, that people were not given the opportunity to see housing advertisements in areas where it was determined they might be less likely to engage with that advertisement so we're not going to even show it to them.

Alan Kaplinsky:

And did the Department of Justice go after the advertisers as well or just Facebook?

Rich Andreano:

Right now, it's just been Facebook. Now, you may recall right after this was started by HUD, New York Department of Financial Services started an investigation looking at it from the advertiser point of view. We still don't have any public resolution of that. But there's always a possibility that the government might decide to start looking at advertisers. It has not been that yet other than the New York DFS inquiry.

Alan Kaplinsky:

Are there a lot of advertisers? Are they mentioned in the complaint?

Rich Andreano:

They do not mention them specifically in the complaint. They do know there are a lot and that Facebook derives a substantial amount of revenue from its advertising, in the billions of dollars.

Alan Kaplinsky:

All right. I'm sorry I interrupted. You were describing how this complaint works.

Rich Andreano:

Sure. And what it was is the basic methodology. They said there were three different methodologies that Facebook used. Two, in fact, exclude individuals from seeing ads. One was trait-based targeting. This is where it encouraged advertisers to use information that Facebook had to select the traits of individuals who would see their ads, and on the other side of the coin the individuals who would not see their ads, which was where the problem lies in terms of the Fair Housing Act. And those traits is it alleged by the government included one or more prohibited bases under the Fair Housing Act.

Rich Andreano:

Another, what was called originally lookalike targeting or lookalike audience. Today it's called special ad audience, although the government believes the change in term didn't really affect what was happening. This is where an advertiser would say, "Here is a key audience I usually market to, but there are a lot of other Facebook users. Facebook, could you help me develop a lookalike audience from other Facebook users?" And through a machine learning algorithm it would go out looking at the data Facebook had on Facebook users, as the government alleges, and find a lookalike group. And the argument was factors in determining that lookalike group included one or more prohibited bases. So that was the second way.

Alan Kaplinsky:

So let me make sure I understand how the lookalike thing worked. An advertiser, somebody who's soliciting mortgage loans would send data to Facebook about existing mortgage loans that they had made sometime in the past, and apparently the advertiser would know how these people performed on their mortgage loans. And it would send Facebook information. I assume it would hide the name of the individual, otherwise it'd probably be breaching some privacy law. And then say to Facebook, "Okay, these are the characteristics of people we like, people who perform on their loans. Send us a whole bunch of people that look like them."

Rich Andreano:

Yeah. In one or more other ways, and that was likely one of the ways that advertisers would have what the complaint refers to as a source audience, but a group it liked. We market to these people. We've sold goods to these people. These are the folks we like to be our customers. But there are a lot of Facebook users who aren't our customers. Facebook, could you go out and find similar customers?

Alan Kaplinsky:

The people they'd identify then, Rich, they were also Facebook users. In other words, they weren't sending to Facebook some people who weren't members of Facebook.

Rich Andreano:

I think a lot of them were. That's how they had the information on them already, that a lot of them were Facebook users, so they had the existing information on them, although it wouldn't necessarily be limited to that. They may have had other

methods that they had information since they were their existing customers and they did have an existing business relationship with them. But it was basically I found my sweet spot of customers. Facebook, could you find me more of these customers was what the intent was.

Rich Andreano:

And then there was a third approach, which was similar in ways, but they used what the government called personalization algorithms, where an advertiser would have an entire group of its targeted audience. But what these algorithms would do is determine for a particular advertisement who were the people in that audience most likely to engage with that ad, who would it most relate to. And the government's argument is some of the factors that were used in determining that who would most relate to something or is one or more prohibited basis characteristics. So that was, again, taking a large audience and figuring I have this specific ad, who would most be interested in that ad?

Rich Andreano:

That was the third method, that does. And what they referred to there was an eligible audience, which was the universe of the people that an advertiser might want to advertise to, but then the actual audience who is actually going to receive the ad based on the assessment of who most likely would engage in that advertisement. Those were the methods that the DOJ said were used and that it asserts in each case violated the Fair Housing Act because one or more prohibited bases characteristics were involved.

Alan Kaplinsky:

Right. Right. Do we know, I know it's probably not in the complaint, but do we have any idea what the defenses might have been of Facebook to this kind of a charge?

Rich Andreano:

There are some brief references to Facebook saying it really didn't use these characteristics in the way the government is asserting. And the government kind of came back and said, "No, we found statements that were made in earnings calls or made in marketing materials that refute what you're saying, that in fact you were using this, this data to determine who and who should not receive an ad." So it was, "No, we're not doing what you allege." "Yes, we are think you're doing what we've alleged." But that was...

Alan Kaplinsky:

It was more like I guess you could say a factual dispute, right then? They weren't disputing the DOJ's theory, illegal theory of the case?

Rich Andreano:

That's all it refers to in the complaint is there were some factual disputes that Facebook raised.

Alan Kaplinsky:

Yeah. Right, right, right. So didn't Facebook settle a similar lawsuit with similar claims during the HUD investigation?

Rich Andreano:

In fact, they did. And the timing is interesting. The National Fair Housing Alliance and a few other similar groups in March of 2018 filed a lawsuit against Facebook, against its advertising practices, raising claims very similar to those in the HUD charge and the DOJ complaint. Now note, this was March 2018. HUD filed their complaint initially in April 2018. So it followed up very quickly. Now, fast forward to March of 2019, there was a settlement in the lawsuit filed by the National Fair Housing Alliance and a few other groups. And I believe within 10 days after that, HUD filed its charge. So very interesting here that

HUD followed on the National Fair Housing Alliance matter in a very short time after both the initial complaint and the settlement.

Rich Andreano:

And in the settlement, what DOJ says is they acknowledge that Facebook did make some changes to its advertising practices, but they didn't think the changes moved the needle enough. And in fact, an important statement, the DOJ says that the settlement in that lawsuit did not require Facebook to alter its ad delivery system. So they're basically saying while some changes were made, the core of the system remained the same. So that is why I think HUD then moved forward with its charge and DOJ moved forward with its complaint. That yes, there was a settlement. There were some changes. They just weren't enough.

Alan Kaplinsky:

Yeah. Okay. So let's talk about the settlement itself. And I know from prior discussions you and I have had that it isn't really a final settlement yet. It's a tentative settlement. I know you'll explain why in a minute. But before we do that, let's discuss what are the terms of the settlement.

Rich Andreano:

Yeah, will do. And as we'll get to, most of these settlements there are some things that need to be done post settlement, but they're more in the ministerial category. And here, there's a core agreement that the government and Facebook must reach.

Rich Andreano:

Now, as with any settlement of this type, Facebook denies any liability or wrongdoing, statement that the entry into the settlement doesn't constitute admission by Facebook nor is there any finding of liability. So that's standard things that any good lawyer would make sure they got into a settlement agreement. The settlement actually relates to three platforms, Facebook, Instagram, and Messenger. So it's all three of those platforms are involved in the settlement. And the settlement...

Alan Kaplinsky:

All of them owned by Facebook?

Rich Andreano:

All of them owned by Facebook. Yes. They were all Facebook platforms. The settlement is more important not for the monetary purposes or consequences, which we'll see for Facebook are inconsequential, but for what Facebook must do assuming the settlement moves forward. Monetary consequences, again very limited. The government in its complaint asks for monetary damages and a civil money penalty.

Rich Andreano:

Now, there are no monetary damages. That's not surprising. As we have seen in some private lawsuits against these type of advertising practices alleging discrimination under fair housing and/or fair lending laws, it has been difficult for plaintiffs to make a case. The reason being is under more modern federal pleading standards, you have to show more than a violation of a federal statute. You have to show that you yourself suffered concrete injury because of the violation. And that concrete injury requirement has been difficult for plaintiffs to meet. Courts have dismissed, finding even if you establish a violation of statute, you haven't been able to show me you were injured by the violation, therefore this can't proceed. My guess is Facebook argued here we're not paying monetary damages because no one can demonstrate a concrete injury. And the lack of monetary damages to me is a pretty significant telegraphing that that probably was the way the discussions progressed.

Rich Andreano:

There is a civil money penalty, which is the maximum under the Fair Housing Act, a whopping \$115,054. Now, we know with Facebook, that's not even, you know petty cash.

Alan Kaplinsky:

Chump change.

Rich Andreano:

Yeah. Chump change. That's nothing for Facebook. What is important though is it doesn't mean the settlement's without relevance. No, it's with relevance. In a going forward format is what Facebook must do. And key here, and this is where I say we're moving into the tentative phase, Facebook has to implement changes in its targeting options and delivery processes for housing ads to resolve the HUD charge and the DOJ complaint. What it needs to develop is what they call in the settlement a variance reduction system to reduce the variances in ad impressions, meaning people who get to see an ad, between the eligible audience and the actual audience who is sent the ad. And it has to reduce the variances with regard to sex and then estimated race and ethnicity. And we'll get to the estimated race and ethnicity in a bit.

Rich Andreano:

Here's where the key is. Compliance metrics have to be developed with regard to how much are the variances with regard to sex, race, and ethnicity reduced in order to resolve the complaint. That has not been agreed to and that's something the government and Facebook must agree to. And there's not a lot of time really. These are complex matters. There is in the settlement agreement a date of December 16th where the parties by then have to confirm good faith in effort to agree on the metrics that will be used to determine is the reduction in disparities sufficient to allow the settlement to move forward.

Rich Andreano:

Now, given the lack of time really, because that's really not that far off for a matter of this consequence, one would have to think that during the settlement discussions they establish basic positions on where they are and where they need to be in order to move forward. I would have to think they've at least conceptually discussed where they need to be, and now it's, as they say, the devil is in the details. But that's where we're moving. And then the key date is December 31. Basically, it's fisher cut bait by December 31. Either they have an agreement on these metrics or they don't. If they do, then the settlement agreement will have a four-year term from the original effective date, which is whatever approved by the court.

Rich Andreano:

Now, here's where it becomes important and significant I think for Facebook. At that point then, there will be an independent third-party reviewer who will assess if this variance reduction system that's been developed is in fact meeting the metrics in reducing disparities as agreed to by the parties. And the settlement provides that Facebook will provide the review with any, and I do say any, it says any information necessary to verify compliance with the metrics. And if Facebook has a dispute with what the reviewer is asking for, the court has ultimate authority in determining what information Facebook must turn over to the reviewer.

Alan Kaplinsky:

So how does the reviewer get picked? Is that picked jointly?

Rich Andreano:

It's an independent. They will select someone, but there's a right of rejection. And it can't be anyone who's done any work for Facebook within a period of time. So it has to be a truly independent party and one who's experienced in the fair lending area.

Alan Kaplinsky:

Right. Right. And if they can't come to an agreement, does the court pick the reviewer?

Rich Andreano:

As I recall, there is a mechanism if they have trouble with that. I can't remember the specifics now, but there is a mechanism to how to get to the reviewer. And ultimately, as to most disputes, the court is given final say in these matters.

Alan Kaplinsky:

Right. Right. I take it we don't really have any idea right now, since the settlement got announced on June 21 we haven't heard anything more about where they stand in the process?

Rich Andreano:

It's been quiet. My guess is it'll stay that way until either we have an announcement that they've come to an agreement or that they haven't. My guess is it'll stay quiet up until that point.

Alan Kaplinsky:

Yeah. So we probably aren't going to hear anything until December, what's that date? 16th?

Rich Andreano:

Between the 16th and the 31st. That's the magic time period I think that we'll hear. And if they agree, we have a four-year settlement agreement. If they don't...

Alan Kaplinsky:

Now, does that mean at the end of, I mean, why, I'm just curious why there would be a term of four years associated with it? I mean, at the end of four years, does that really mean that Facebook can say, "Okay, we're going to go back to what we used to do"?

Rich Andreano:

Yeah. My guess is that the thought is that they can't return to that. It's this will be the term used to study if in fact this system is working. And if it's working, then the thought will be if they want to stay out of fair housing jail, they have to keep using that system or some other system that has similar results.

Alan Kaplinsky:

Yeah. Okay. Okay. And so I take it the settlement also provides for monitoring.

Rich Andreano:

There is monitoring. That's where the reviewer's involved, in monitoring. It's periodic monitoring. I think every four months throughout the term the reviewer will be assessing information and asking Facebook.

Alan Kaplinsky:

Pretty good gig for the most person who gets selected, right?

Rich Andreano:

Yeah. This will be a significant amount of work and very relevant work and something Facebook doesn't want to do because they're going to have to open the door to their inner working, sort of show how the secret sauce is made.

Alan Kaplinsky:

Open up the kimono? Is that what they...

Rich Andreano:

Yeah. And they don't like that. Technology companies hate opening the door to how they do what they do.

Alan Kaplinsky:

Yeah. Yeah. Yeah. So you mentioned earlier that the ad variances will be assessed based on sex and you said estimated race and ethnicity. How will race and ethnicity be estimated? How's that work?

Rich Andreano:

That's very interesting there. Since Facebook has data from the user on actual sex, they're allowing them to use that. Even though Facebook has data that I'd say with a pretty high degree of likelihood of being accurate that they can pick the race and ethnicity of a user, they're not allowing them to use that. And for folks who've been fans of the bureau, the Consumer Financial Protection Bureau and its efforts in the non-mortgage area, they will find this I think relatively interesting. Unless a different method is agreed to, what Facebook must use to estimate race and ethnicity is a privacy-enhanced version of the Bayesian Improved Surname Geocoding methodology. That is a methodology...

Alan Kaplinsky:

And what in the world is that?

Rich Andreano:

That is, it's a methodology the bureau loves to use. What it does for non-mortgage credit where you don't have actual demographic data. But to the bureau is that's no problem. We can guesstimate the race and ethnicity. And as you know, Alan, they love doing this in the auto financing area, where there were a number of settlements. It's a methodology that uses a combination of surname and location data to estimate race...

Alan Kaplinsky:

Geocoding, right?

Rich Andreano:

... geocoding to estimate race and ethnicity. What they know is particularly in high minority areas, more than 80%, if someone lives there, you're presumed to be a minority. If it's less than that, you're presumed to be white. Then they have through surname and the census, with a given surname, apparently 140 or some-odd- thousand surnames, they can estimate someone with their surname the likelihood of them being a particular race or ethnicity. Put the two of them together, supposedly it involves a higher degree of accuracy. And that's what they'll be using.

Rich Andreano:

Now, while the bureau thinks this is not only the best thing since sliced bread, but the best thing since sliced bread and homemade butter, the industry thinks it is not accurate, that it misidentifies consumer, and particularly that it overestimates protected class members. And that's been done through a very reputable statistical analysis firm that was hired by the industry to assess the method. So nonetheless, the government loves this method and Facebook has agreed to use it unless an alternative method is designated.

Alan Kaplinsky:

Yeah. Wow. Well, that's going to be very, very interesting to see how that turns out. And you mentioned the CFPB. I take it they had no involvement that you're aware of in the complaint or the settlement.

Rich Andreano:

They have not separately brought a claim under the Equal Credit Opportunity Act. And I have a theory why they have not done that.

Alan Kaplinsky:

Yeah, why do you think that is?

Rich Andreano:

Yeah. This essentially would be what CFPB Director Chopra refers to as digital redlining. Instead of using the old-fashioned method of taking an urban area and coding certain areas in red and that you won't seek applications there and you try not to make loans there, what he says is the more modern version of that is either through advertising or underwriting algorithms you're using machine learning and algorithms to exclude minorities from advertisements to deny minorities in an inappropriate manner.

Rich Andreano:

Now, as to advertising, it's important because that really involves making credit available. And there's an issue. Fair Housing Act's very clear because it has specific language that was meant to address redlining. That is one of the goals of the statute was to eliminate redlining. So the government put in very specific language basically making it illegal to not make available financing or other residential real estate services based on prohibited characteristics.

Rich Andreano:

A code does not have similar language. It focuses on applicants. And none of these consumers who are Facebook users are applicants. So if the bureau were to bring a claim under the Equal Credit Opportunity Act, I think that would be a big mistake because Facebook has the wherewithal to take this case all the way on up, meaning all the way on up to the Supreme Court. And if this Supreme Court got a hold of the issue is can you bring a redlining claim involving consumers who are not applicants under the Equal Credit Opportunity Act, while the government would say they can, I think the odds are relatively high that this Supreme Court would say, no, you can't. And I don't think the bureau wants to risk that.

Alan Kaplinsky:

Yeah, I would bet on that.

Rich Andreano:

Yeah.

Alan Kaplinsky:

Yeah. Okay.

Rich Andreano:

So I think they're smart staying on the sideline in this fight.

Alan Kaplinsky:

Right, right, right. Got it. Got it. To your knowledge, any state attorneys general or other state government agencies involved in this issue also?

Rich Andreano:

Not yet. As a follow-up to this, Washington state has taken action in the past. I suspect the state attorney generals will monitor this very closely, and I wouldn't be surprised if they move against various technology providers also. I note, for instance, that HUD did confer with Google on some of its practices and Google voluntarily agreed to change some of its advertising practices. So Facebook isn't the only one. I think any technology provider here that is in an area covered by the fair housing or fair lending laws, also employment laws, which also have similar prohibitions against discrimination, I think they need to heed and pay very close attention to the settlement, see what happens.

Alan Kaplinsky:

Yeah. I guess the one area where Facebook can breathe a sigh of relief that it doesn't apply, and that is to non-mortgage targeted advertising and advertising where the company's not seeking to hire employees.

Rich Andreano:

Right. Yeah, out of the general fair lending or employment discrimination area. Now, of course, we do have the bureau saying that it doesn't matter if fair lending or other laws don't apply, we can go after discrimination under UDAP. You know, as we know, we think that's a stretch to take an area that where Congress or a state has not passed a fair lending type law and they say somehow you can apply fair lending principles under UDAP. That to me seems quite a stretch.

Alan Kaplinsky:

Yeah. And very recently, a number of trade associations combined and wrote a white paper on why that theory of the CFPB is off base. And then after that came down, you had the Supreme Court very recently issuing the case of State of West Virginia versus the Environmental Protection Agency where to me it was almost like the Supreme Court was thinking of what the CFPB had just done.

Rich Andreano:

It was a shot across the bow of any agency who wants to be aggressive in the interpretation of their authorizing statute. And we're seeing a lot of reports on that now, that in fact agencies need to take heed of that decision and how aggressively they interpret their statutes. This bureau doesn't, they seem fairly aggressive. But it's one thing issuing a press release or advisory opinion. It's another thing being successful in court.

Alan Kaplinsky:

Yeah. Right. That's for sure. So we're drawing to the end of our show today, Rich. And I'm just wondering if we've covered everything. Is there any further message that you'd like to deliver?

Rich Andreano:

I think one thing, and I've said this in the past and as we've seen, it's usually technology is ahead of the law and it takes a while for the law to catch up. But as I often tell people that just because technology enables us to do something, it doesn't mean we should do it, that we really need to assess what the implications are under existing laws and to understand that government regulators will try to use existing laws to get a conduct and to the extent it's insufficient then they'll use UDAP, and then eventually the law will catch up. So that's one thing, just in any of these decisions you need to have legal and compliance involved in assessing the risks under various laws.

Alan Kaplinsky:

Yeah. I mean, another good example of that is another thing that the CFPB recently got involved in, and that is issuing the circular or advice regarding using adverse action notices in connection with underwriting decisions that are made by artificial intelligence. Same thing.

Rich Andreano:

Exactly. Yeah. You have to provide the principle reasons that led to the denial. And if you don't know those reasons because it was done by an automated system, that doesn't absolve you of the obligation to provide the reasons.

Alan Kaplinsky:

Yeah.

Rich Andreano:

Yeah.

Alan Kaplinsky:

Yeah. And that's a good, I think, parting comment for everybody, that technology is great and we should encourage people to use it, but it doesn't by any means mean that you got some kind of a special exemption from any federal or state consumer protection law. All of that still applies.

Rich Andreano:

That's right. What I tell people is when you agree to use a technology platform, if there is a fair lending law violation, it's your violation.

Alan Kaplinsky:

Right. Well, Rich, I want to thank you very much for sharing this terrific information about the settlement with Facebook and DOJ. And I think probably toward the end of the year or early next year when we see how this thing plays out, we'll probably want to catch up on this because this is a very, very important issue. I mean, I think you had mentioned to me to Facebook this is an issue well over a billion dollars.

Rich Andreano:

Billions.

Alan Kaplinsky:

Billions.

Rich Andreano:

Billions of dollars they make off their advertising.

Alan Kaplinsky:

That's with a B, right?

Rich Andreano:

Yeah, billions with a B. And we'll monitor developments. And again, as Alan noted, we will then be back to report on appropriate developments.

Alan Kaplinsky:

Yeah. Yeah. I want to thank all of our listeners today for also downloading the program. And just to remind everybody, it's a weekly show, 50 times during the year. We take off two weeks during the holidays in November and December. And also tell everybody something that we are very proud of. And that is last year, the social media lawyer site called Good2BSocial, it's a consulting firm that teaches law firms how to use social media, and they came out with a ranking and Ballard Spahr in the podcast area came out second in the country among the top 200 law firms. And we surely are very proud of that. So with that, hope everybody has a good day.