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August 11, 2017

Via email to MyLanh.Graves@Vermont.gov

The Honorable Thomas J. Donovan, Jr.
Attorney General of Vermont
109 State Street
Montpelier, VT 05609-1001

The Honorable Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation
89 Main Street
Montpelier, VT 05620-3101

RE: State of Vermont Data Broker Regulation Working Group

Dear General Donovan and Commissioner Pieciak:

These comments are being submitted by Consumer Federation of America, the National Consumers League, Consumer Watchdog, Consumer Action, and Privacy Rights Clearinghouse.¹ As nonprofit consumer organizations, we have long worked on issues related to the privacy and security of individuals' personal information.

¹ Consumer Federation of America is an association of more than 250 nonprofit consumer organizations across the United States. Its mission is to advance consumers' interests through research, advocacy and education. The National Consumers League, founded in 1899, is America's pioneering consumer and worker advocacy organization. Consumer Watchdog is a nonprofit organization dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics. Through multilingual financial education materials, community outreach and grassroots "make your voice heard" advocacy, Consumer Action empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper. The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy organization that educates and empowers individuals to protect their privacy.



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The data broker business raises important privacy and security issues which have not been addressed by Congress. As the Federal Trade Commission (FTC) stated in its 2014 report on data brokers:

“For decades, policymakers have expressed concerns about the lack of transparency of companies that buy and sell consumer data without direct consumer interaction.”²

The fact that data brokers collect information about consumers largely without their knowledge is not the only concern. As the FTC report outlines, this data is used to make inferences about consumers, including potentially sensitive inferences; such inferences could affect consumers’ abilities to make certain transactions or to receive certain offers; storing massive amounts of consumers’ personal information could pose security risks; and consumers do not have adequate choices with regard to data brokers’ collection and use of this information. While these concerns are not new, a study³ by the World Privacy Forum highlighted how new types of predictive consumer scoring, enabled by new streams of data, are used in secret, are not covered by existing consumer protections, and can result in new forms of redlining in the marketplace, unjust or incorrect eligibility decisions, and identity theft.

Though Congress has studied data brokers⁴ and the FTC has recommended legislation,⁵ there has been no real progress on this issue at the federal level. As with data breach notification and other needed consumer protections, we believe that the states are in the best position to take the lead. We support Vermont’s initiative and offer these suggestions.

Definition of data broker

We suggest adopting a relatively narrow definition of data brokers. In its 2012 report on privacy, the FTC described data brokers as “companies that collect information, including personal information, about consumers, from a wide variety of sources for the purpose of reselling such information to their customers for various purposes, including verifying an individual’s identity, differentiating records,

² *Data Brokers, A Call for Transparency and Accountability* (May 2014), <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>, at i.

³ Pam Dixon and Robert Gellman, *The Scoring of America: How Secret Consumer Scores Threaten Your Privacy and Your Future*, World Privacy Forum (April 2, 2014), http://www.worldprivacyforum.org/wp-content/uploads/2014/04/WPF_Scoring_of_America_April2014_fs.pdf.

⁴ See Senate Committee on Science, Commerce and Transportation, Office of Oversight and Investigations majority staff report (December 18, 2003) at http://educationnewyork.com/files/rockefeller_databroker.pdf.

⁵ *Supra* <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf> at 69.



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marketing products, and preventing financial fraud.”⁶ This could be the basis for a definition. It might be useful to specify that the definition applies to companies “whose primary business” is to collect and sell such data.

We would not include in this definition first parties who collect and use their customers’ data, or services such as internet service providers, search engines and social media sites that collect users’ data and analyze it to sell advertising services to them on behalf of other companies. These are different business models and the privacy issues related to them should be addressed separately.

Regulation of data brokers

We believe that the state of Vermont should regulate companies that meet the definition of data brokers and collect and sell data about Vermont residents. Covered data brokers should be required to register with the state so that they can be identified and subject to the appropriate oversight.

The state agency that is deemed best suited to handle the registration should make a list of covered data brokers and their contact information publicly available. We suggest creating a special web page that would provide information about Vermonter’s rights with regard to data brokers, links and toll-free numbers that Vermonters can use to contact covered data brokers directly, and easy-to-use means to make complaints about data brokers online. The state should also make such information and the ability to submit complaints available to residents via a toll-free number.

The state should also institute penalties for failure to register or to comply with other requirements that it sets for covered entities. In addition to action by the state to enforce the requirements, Vermont residents should have a private right of action.

Needed consumer protections

Covered data brokers should be required to provide Vermonters with:

- Access to their data and the ability to correct inaccuracies, at no charge.
- Information about the sources of their data.
- The ability to opt-out of their data being used for marketing purposes, with easy-to-use mechanisms to do so, at no charge.
- The ability to opt-out of their data being used for people search products, with easy-to-use mechanisms to do so, at no charge.

⁶ Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change* (March 2012), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> at 68.



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Furthermore, similar to consumers' rights when adverse actions are taken on the basis of their credit reports, we suggest that entities that decline to transact with Vermonters based on information provided by covered data brokers for fraud mitigation purposes should be required to provide those consumers with a basic explanation of the nature of that data and how to reach the data broker that supplied it. This would enable Vermonters to take the necessary steps to correct the data if it is inaccurate.

Finally, the state should mandate reasonable security requirements for the information held by data brokers.

Balancing consumers' and data brokers' interests

It is crucial to create transparency for an industry that has a significant impact on consumers but which operates largely in secret. Vermont led the way in ensuring that consumers were treated fairly by credit reporting agencies and it is entirely appropriate for the state to enact consumer protections with regard to data brokers' activities that are not subject to existing fair credit reporting laws.

Companies that profit from the business of collecting and selling consumers' data should be responsible for ensuring that such data is accurate, that the consumers to whom it pertains have reasonable access and control, and that their operations are conducted in as open and secure a manner as possible. Consumers will benefit from this transparency, the ability to correct and control their data, and greater security. Data brokers will benefit by providing services that are based on more accurate data, by reducing the potential for costly data breaches, and by increasing public trust in their business.

The Federal Trade Commission lacks the rulemaking authority to regulate data brokers, which is why it has called for legislation. Data broker bills that have been introduced in Congress have languished and forward movement seems highly unlikely. Vermont can and should step forward to protect its residents, ensure that this business operates responsibly, and provide a model for other states to follow.

Respectfully submitted by:

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