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August 11, 2017

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

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

RE: Data Broker Working Group

Dear Attorney General Donovan and Commissioner Pieciak,

The ACLU of Vermont offers the following comments to the Vermont Office of the Attorney General and the Department of Financial Regulation regarding data broker regulation.

The ACLU-VT is a statewide nonprofit, nonpartisan organization with more than 7,000 members and supporters dedicated to the principles of liberty and equality embodied in the constitutions and laws of Vermont and the United States. It is the Vermont affiliate of the American Civil Liberties Union, a nationwide nonpartisan organization with over 1,00,000 members.

The ACLU-VT is dedicated to protecting the individual rights and liberties embodied in the state and federal constitutions, and has a longstanding interest in preserving the privacy rights of Vermonters. The ACLU of Vermont offers these comments on data broker regulation consistent with our commitment to protect Vermonters' privacy and personal information.

Background

Every day, data brokers collect, collate, analyze, package, and score information regarding Vermonters, both online and offline. Such data can be used for myriad beneficial or detrimental purposes. Vermonters do not know what of their personal information is under circulation, what data brokers have access to it, or how that data is being used. Vermonters care deeply about their personal privacy, and Vermont should lead the way in empowering consumers to know what information companies are collecting about them and what they are doing with that information.

This is not an area where industry self-regulation will be sufficient to protect Vermonters' privacy, and the data broker industry has not been forthcoming with information about their practices. When asked by a U.S. Senate committee to provide documents and explanations regarding their work, at least some of the data brokers asked remained "intent on keeping key aspects of their operations secret from both the Committee and the general public."¹

ACLU Recommendations

There are several avenues Vermont could take to improve transparency and due process in the realm of data collection. One approach would be modeled on proposed legislation in California and at the federal level² requiring data brokers that sell or offer for sale the information of any resident of Vermont to create a way for Vermonters to review and correct individually identifying information collected or maintained on that individual by the broker. This would be similar to the option Vermonters already have to access and correct information in their credit reports. Data brokers would be required to post on their public website a notice instructing individuals how to review and correct such information. Data brokers would also be required to establish an opt-out procedure allowing individuals to block the sharing of their information with third parties. Any violation of this legislation would be treated as an unfair or deceptive act or practice under 9 V.S.A. §2453.

Another approach would be similar to the 'Right to Know Act' proposed a few years ago in California³ and would give any Vermont consumer the ability to demand from businesses that keep personal customer information or share it with third parties a copy of that consumer's information and the names and contact information of the relevant third parties. The online privacy policies of such businesses would include a description of these rights and instructions for exercising them. A business would not be required to respond to a request by the same customer more than once within a twelve-month period.

The Office of the Attorney General and the Department of Financial Regulation can also play a critical role in protecting Vermonters' online privacy interests and supplement needed regulation and legislation through other means. For example, public awareness campaigns about consumer information and the way it is shared would assist Vermonters in understanding how better to protect their online privacy. The two

¹ Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations Majority Staff, *A Review of the Data Broker Industry: Collection, Use, and Sale of Consumer Data for Marketing Purposes* (Dec. 2013) [hereinafter Senate Commerce Report], https://www.commerce.senate.gov/public/_cache/files/bd5dad8b-a9e8-4fe9-a2a7-b17f4798ee5a/D5E458CDB663175E9D73231DF42EC040.12.18.13-senate-commerce-committee-report-on-data-broker-industry.pdf.

² The Data Broker Accountability and Transparency Act of 2015, S.668, 114th Cong. (2015), <https://www.congress.gov/114/bills/s668/BILLS-114s668is.pdf>; SB 1348, 2013-2014 Reg. Sess. (Ca. 2014), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB1348.

³ AB 1291, 2013-2014 Reg. Sess. (Ca. 2013), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB1291.

departments could also publicize ‘Do Not Track’ options on browsers or other platforms that help consumers control the flow of their information.

Finally, Vermont’s consumer protection statutes could serve as important tools for addressing some of the potential abuses that may arise through the use of data broker-collected information.

As the ACLU and multiple governmental authorities have warned, when it comes to the collection and aggregation of personal information, the potential for misuse is obvious.⁴ For example, in 2013 and 2014, the Senate Commerce Committee and the Federal Trade Commission (FTC) released reports on the data broker industry, detailing the ways in which these largely unregulated companies enable precision marketing of consumer products and services to financially vulnerable individuals. The FTC observed that data could be used for discriminatory purposes,⁵ while the Senate report warned that data sold by some brokers is “likely to appeal to companies that sell high-cost loans and other financially risky products,”⁶ and offered examples of predatory businesses using consumer profiles compiled by brokers to target vulnerable populations.

The ACLU is deeply concerned by reports that some landlords have used data broker lists to pre-screen tenants and refuse their applications, potentially based on discriminatory factors.⁷ It is unfortunately not difficult to imagine similar scenarios playing out in Vermont. For instance, a credit provider could rely on data broker-provided data to advertise higher interest rates to people of color – something that would be actionable under Vermont’s consumer protection statutes.

While no substitute for industry regulation, existing statutes can and should be utilized by the Attorney General and the Department of Financial Regulation to protect Vermonters’ rights.

Conclusion

The ACLU of Vermont urges the Office of the Attorney General and the Department of Financial Regulation to consider seriously these proposals and take all appropriate measures to ensure the protection of Vermonters’ privacy

⁴ See, e.g., Letter from Laura Murphy, Director, ACLU Washington Legislative Office, and Rachel Goodman, Staff Attorney, ACLU Racial Justice Program, to Edith Ramirez, Chairwoman, Federal Trade Commission (2014), https://www.aclu.org/sites/default/files/assets/141027_ftc_comment.pdf; Federal Trade Commission, *Data Brokers: A Call for Transparency and Accountability* (May 2014) [hereinafter FTC Report], <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>; Senate Commerce Report, *supra* note 1.

⁵ FTC Report, *supra* note 4, at 55-56.

⁶ Senate Commerce Report, *supra* note 1, at ii.

⁷ Levi Sumagaysay, *Mercury News interview: Nicole Ozer, tech policy director for ACLU of Northern California*, MERCURY NEWS (May 10, 2013), <http://www.mercurynews.com/2013/05/10/mercury-news-interview-nicole-ozar-tech-policy-director-for-aclu-of-northern-california/>.

and personal information. Please contact Chloé White, Policy Director at the ACLU-VT, at cwhite@acluvt.org or (802) 223-6304x110 with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Chloé White".

Chloé White
Policy Director
ACLU-VT