



August 10, 2017

VIA EMAIL: MyLanh.Graves@Vermont.gov

My-Lanh Graves
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609

Re: Data Brokers

Dear Ms. Graves,

Thank you for the opportunity to provide these comments to the Data Broker Legislation Working Group regarding the need for data broker industry regulation.

I am providing these comments as an information law and policy expert. I teach information privacy law and intellectual property law courses as an adjunct professor at Fordham Law School where I serve as the Executive Director of the Center on Law and Information Policy ("Fordham CLIP"). The views and opinions expressed in these comments are mine and do not represent those of Fordham or Fordham CLIP.

At Fordham CLIP, I have worked extensively on student data privacy issues and am a co-author of the study "Privacy and Cloud Computing in Public Schools" that was featured in U.S. Congressional and state legislative hearings and that sparked a variety of state student privacy statutes around the country. Since 2014, we have been researching the marketplace for the commercial sale of K-12 student information for a study that I am co-authoring and that Fordham CLIP plans to release in the next several weeks. Upon the release of the study, I will be pleased to provide you with a copy for reference and citation; in the meantime, please accept these comments for the public record.

Our research found that there appears to be a robust commercial marketplace for student data that is used to sell products and services unrelated to education. For example, one data broker identified in Fordham CLIP's upcoming report advertises high school students as a "brand conscious and tech savvy group of consumers" and recommends that its list of high school students be used for marketing formal wear and limo services, summer camp information, apparel and footwear, smartphones and personal electronics, health and beauty products, and automotive offers and accessories. Fordham CLIP's research also found that data brokers advertise the sale of sensitive data including ethnic and religious student lists.

From the perspective of consumers, our research has found that the data broker industry is an opaque market and there is a profound need for transparency. Fordham CLIP's research revealed that a student or parent cannot readily find out who is selling the student's information nor can an individual discover the original source or furnisher of the data held by data brokers. From the perspective of industry, however, transparency should be part of data integrity. Our research shows, for example, that data brokers advertise in general terms the origins of their data to prospective list purchasers.

The sale of personal information should not be conducted as a black-market. A parent should be able to learn who is selling his or her child's information. Prospective clients should be able to ask: Where does the data come from and how can we know that it is legitimate and reliable?

However, our Fordham CLIP research has identified that it is difficult for individuals even to know who the data brokers are. The data broker industry should not be a subterranean market. Fordham CLIP spent over two years researching data brokers who were purporting to sell student data. Our research involved thorough searches of websites, legal databases as well as the collection of commercial solicitations received by high school students. In doing this research, we wanted to learn what a motivated and knowledgeable parent or student could find out about the sale of the student's information. Through sustained efforts over two years, a team of Fordham CLIP researchers could only identify a handful of data brokers who definitively sell or advertise the sale of student information or have done so in the past.

This leads to another issue of transparency—the use of hidden stereotypes. For example, one data broker identified in Fordham CLIP's upcoming report advertises the following lists: "Rich Kids of America," "Over Achieving High Schoolers," and "The Awkward Years - High School." What are other data brokers selling about kids? How are students being classified and what are these judgments based on? Fordham CLIP's research indicates that this is also an opaque box. Without transparency, there can be no public scrutiny. Individuals should be able to know how and why they are profiled. With transparency, the public can at least have a conversation about whether these stereotypes are appropriate and as to whether they have an enduring effect on labeled individuals. For example, regarding the company selling a list of high school students type cast as "The Awkward Years." What is the profile and what types of students are being labeled "awkward" in high school? In particular, there should be transparency as to what labeling exists based on assumptions about political, religious, ethnic, or health factors. The public cannot evaluate proper and improper stereotypes and uses of these assumptions without knowing what the labels are. This is especially important in a world where there are fewer requirements or incentives to ever delete personal data.

Transparency of the identities of data brokers and the identities of the original sellers of personal information would also enable easy compliance checks for existing privacy protections. If sources of data are educational institutions, then there may be a

FERPA¹ compliance issue. If sources are health care entities, there may be a HIPAA² compliance problem. If sources are consumer reporting agencies, there may be a FCRA³ compliance issue. Transparency as to sources of data will also assist, generally, to gauge whether there is compliance with sharing provisions in companies' privacy policies. Presently, data brokers are accumulating information from sources, and individuals are unable to know what these sources are.

In conclusion, there are large gaps in law and regulation for the types of practices that data brokers engage in. U.S. law regulates data brokers reporting on eligibility for credit, employment and insurance with the Fair Credit Reporting Act, but there is a much broader unregulated commercial marketplace. The present legal regimes are not enough and self-regulation should not take place in a black box.

With these comments, I encourage action toward transparency for (i) the identities of data brokers, (ii) what lists and selects they are selling, and (iii) where this data derives.

Thank you for the opportunity to participate in these proceedings and for your consideration of my comments.

Respectfully submitted,



N. Cameron Russell

¹ The Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2012). Regulations under FERPA are codified at 34 C.F.R. § 99 (2011).

² Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936.

³ The Fair Credit Reporting Act, Pub. L. No. 91-508, Tit. VI, 84 Stat. 1114, 1128 (1970) (codified as amended at 15 U.S.C. §§ 1691-1681x).