

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:

My name is Megan Noonan, the Government Reform Associate with the Vermont Public Interest Research Group, VPIRG, the state's largest environmental and consumer advocacy organization. Thank you for the opportunity to offer the comments of VPIRG and U.S. PIRG at this important hearing on regulation of data brokers.

Vermont has always been a leader on consumer privacy protection. In 1991, the credit bureau TRW (now Experian) had incorrectly reported that thousands of citizens of Norwich, Vermont had failed to pay property taxes. The ensuing public outrage led to Vermont's passage of one of the nation's strongest mini-Fair Credit Reporting Acts (FCRA), including the nation's first free annual credit report law. The Vermont Attorney General's Office played an instrumental role in passing and enforcing that law and then leading ongoing nationwide efforts to defend the rights of states to enact stronger state privacy laws against a still-active special interest push to preempt all stronger state laws.

In 2014, the Federal Trade Commission issued a major report on data brokers.¹ It noted that its own 2012 "Privacy Report" had identified 3 types of data brokers but that the activities of the two types not regulated by the FCRA (which covers furnishers, sellers (credit bureaus) and users of information used

¹ All information in *italics* that follows is from pages *viii-ix* of "Data Brokers: A Call For Transparency and Accountability: A Report of the Federal Trade Commission (May 2014)" available at <https://www.ftc.gov/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014>. We note that former Vermont Assistant Attorney General Julie Brill, then a Commissioner of the Federal Trade Commission, contributed large parts of this report, including a concurrence (Appendix C) calling for even stronger data broker protections.

for credit, employment or insurance purposes), “remain opaque.” Those opaque entities are the data brokers that the legislature has asked this panel to investigate.

They include the following: “(2) entities that maintain data for marketing purposes; and (3) non-FCRA covered entities that maintain data for non-marketing purposes that fall outside of the FCRA, such as to detect fraud or locate people.”

In its comprehensive 2014 report on Data Brokers, the FTC admits that legislative action is needed to address gaps in the law that subject consumers to a variety of risks. FTC recommendations include the following:

“Congress should seek to enable consumers to easily identify which data brokers may have data about them and where they should go to access such information and exercise opt-out rights.”

We concur. To make this possible, since Congress has not and is not expected to act, Vermont should require the registration of all major data brokers collecting or selling information in the state. As other witnesses will explain in greater detail, you must take caution to adopt a careful definition that captures major data brokers without “boiling the ocean²” by, for example, including every tech company or every consumer-facing or intermediary firm on the Internet.

“Congress should consider requiring data brokers to clearly disclose to consumers (e.g., on their websites) that they not only use the raw data that they obtain from their sources, such as a person’s name, address, age, and income range, but that they also derive from the data certain data elements. Allowing consumers to access data about themselves is particularly important in the case of sensitive information—and inferences about sensitive consumer preferences and characteristics—such as those relating to certain health information.”

We concur. Vermont should give consumers a Fair Information Practices right to access and correct their own data broker information for free, as the FCRA allows.

“Congress should consider requiring data brokers to disclose the names and/or categories of their sources of data, so that consumers are better able to determine if, for example, they need to correct their data with an original public record source.”

We concur. Vermont should require data brokers to disclose at some level their sources of information so that consumers are better able to determine if they need to correct their data.

² See written statement of Adjunct Professor Chris Hoofnagle of the Center for Law and Technology, Berkeley School of Law, University of California (emailed to the Vermont Attorney’s General Office on 13 July 2017).

“Congress should consider requiring consumer-facing entities to provide a prominent notice to consumers that they share consumer data with data brokers and provide consumers with choices about the use of their data, such as the ability to opt-out of sharing their information with data brokers.”

We concur. Vermont should give consumers the right to control the use of their data for secondary purposes.

Thank you for the opportunity to participate. VPIRG and U.S. PIRG will provide a longer statement for the record before the docket concludes. We also associate ourselves with the more detailed testimony of Pam Dixon of the World Privacy Forum and Chris Hoofnagle of the Center for Law and Technology, Berkeley School of Law, University of California.