

*Data Brokers: A Call for Transparency and Accountability*  
Matter No. P125404

Statement of Commissioner Julie Brill  
May 27, 2014

[H]e that filches from me my good name  
Robs me of that which not enriches him,



their subsequent use of the information, often fall outside of the context in which consumers provide the information, prominent notice is appropriate. The Commission's call for transparency and choice at the source of data would enhance the ability of consumers to learn about these practices as the information would come to them from retailers, websites, social media, and other entities with which consumers are interacting.<sup>8</sup>

Taken together, the Commission's legislative recommendations, if enacted, would begin to build meaningful levels of transparency, access, and control into the data broker industry.

I write separately today to describe the additional legislative requirements that I believe are needed to ensure that all participants in the industry are appropriately accountable for the use of data brokers' products.

Two areas of discussion in the report demonstrate the need to build additional transparency and accountability measures into legislation. First, data brokers are not only collecting health, financial, racial, and other sensitive information about consumers, but also using other, innocuous data to predict or infer sensitive characteristics.<sup>9</sup> Congress has acted repeatedly to create privacy protections for health and financial data, and federal laws restrict the use of certain kinds of information in credit, lending, housing, and other contexts. Some data products discussed in the Commission's report expose some significant gaps in these laws. Some data brokers – albeit not the nine brokers that the Commission studied for this report – sell marketing lists that identify consumers with specific health conditions, such as addictions and AIDS. The report also identifies marketing segments that focus on ethnicity, financial status, and health conditions.<sup>10</sup> Examples of segments with apparent ethnic dimensions include “Metro Parents” (single parents who are “primarily high school or vocationally educated” and are handling the “stresses of urban life on a small budget”) and “Timeless Traditions” (immigrants who “speak[] some English, but generally prefer[] Spanish”).<sup>11</sup> Nothing in the Commission's report suggests that data brokers or their clients are running afoul of anti-discrimination laws. It is foreseeable, however, that data that closely follow categories that are not permissible grounds for treating consumers differently in a broad array of commercial transactions will be used in exactly this way.

The second area of the report that demonstrates the need for further legislative accountability requirements is its discussion of risk mitigation products. Risk mitigation products support an expanding range of decisions that could have a substantial impact on consumers' lives. For example, banks use identity verification products to meet statutory





secure this consent as well as the data brokers to ensure that their sources secure this consent is a “belts and suspenders” approach that is entirely appropriate, because sources often share with data brokers information about consumers, including sensitive information, outside the context in which consumers provide the information.

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The data broker enterprise is complex, and involves multiple players collecting, sharing, aggregating, creating and using consumer profiles that can contain sensitive information. As the Commission has found, these profiles can be used in contexts that can adversely impact consumers. Greater transparency and accountability must be infused into this enterprise. The Commission’s legislative recommendations, along with the additional recommendations that I have outlined here, would go a long way to shining a much needed light on the practices of data brokers, and to providing consumers and other interested stakeholders with meaningful tools to ensure that the narratives data brokers tell about us are accurate fair, and used in appropriate ways. I am committed to working with Congress, my colleagues at the Commission, the Administration, and other policymakers to help make these important legislative recommendations a reality.

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The Commission’s report is the result of diligent and painstaking work by Commission staff. I applaud their efforts. I look forward to working with my colleagues at the Commission and with staff as we explore in depth other aspects of commercial use of big data, including alternative scoring products,<sup>23</sup> user-generated and user-controlled health data,<sup>24</sup> and low income and underserved consumers.<sup>25</sup>

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<sup>23</sup> See *Spring Privacy Series: Alternative Scoring Products*, FED. TRADE COMM’N (Mar. 19, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/03/spring-privacy-series-alternative-scoring-products>.

<sup>24</sup> *Spring Privacy Series: Consumer Generated and Controlled Health Data*, FED. TRADE COMM’N (May 7, 2014), available at <http://www.ftc.gov/news-events/events-calendar/2014/05/spring-privacy-series-consumer-generated-controlled-health-data>.

<sup>25</sup> Press Release, Fed. Trade Comm’n,