Federal Trade Commission

Big Data: Shining a Light into the Black Box

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Thank you.   I'm delighted to be here today to discuss the important topic of Big

Data and its effects on consumers.   And I'm especially pleased to be sharing this panel

with Frank Pasquale and Peggy

First is the ubiquitous collection of consumer data through the Internet, social media, mobile devices, and sensors.   Think Google and Facebook, your mobile phone, your fitness tracker, your new Smart Car, retail tracking.   It's everywhere.   Second is the plummeting cost of storing data, which has enabled and encouraged ever more collection and use of this data, much of it sensitive.   And third is the powerful new capability to analyze data to draw connections and make inferences and predictions.

In other words, we're talking about the "three Vs" – volume, velocity, and variety of data – each of which is proliferating at a rapid rate, and which together allow for the analysis and use of data in ways that weren't previously possible.

As we know, Big Data is now increasingly being used to make decisions about a wide range of issues affecting consumers.   The FTC held a workshop on this issue last fall, entitled Big Data, A Tool for Inclusion or Exclusion?, to discuss both the consumer benefits and potential harms of this phenomenon, focusing in particular on low-income and underserved consumers.[2]   Certainly, there are benefits.   For example, Big Data is being used to develop alternative credit scores for consumers who don't have traditional credit histories and were previously considered "unscorable" and thus ineligible for credit.   Big Data also can increase access to education – for example, by identifying students for advanced classes who otherwise would not have been chosen based on the usual criteria or, alternatively, students at risk of dropping out and in need of help.

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2   See FTC Workshop, Big Data: A Tool for Inclusion or Exclusion? (Sept. 15, 2014), available at https://www.ftc.gov/news-events/events-calendar/2014/09/big-data-tool-inclusion-or-exclusion.

that an estimated 68 million wearable devices will be shipped this year, and that many

consumers share information collected through these devices with someone else.[4]

These are the challenges that consumers face today, and they are considerable.

But the FTC has an active program to address them.

First, we are doing what we can to open the Black Box and shine a light on Big

Data practices. For example, last year we released a report on our in-depth study of nine

data brokers representing a cross-section of the industry.[5] The report discussed how data

brokers acquire and store billions of data elements on nearly every U.S. consumer and

develop detailed profiles for sale to other companies. It also discussed how data brokers

don't just collect and share raw data, but also develop inferences about people and put

them into categories – such as Urban Scramble and Mobile Mixers, which characterize

low-income, minority consumers; Thrifty Elders; and Financially Challenged. Virtually

all of this happens behind the scenes, without consumers having any idea, let alone

control over it. The report called on Congress to pass legislation requiring greater

transparency, including by giving consumers access to their data and choices about how it

will be used. Notably, the report also called on consumer-facing entities, such as

retailers, to provide choices to consumers before sharing data with data brokers.

Also, as I mentioned, the FTC held its Big Data workshop last fall to examine the

other side of the transaction – whether and how the use of Big Data is benefiting

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http://www.washingtonpost.com/sf/national/2015/05/09/the-revolution-will-be-digitized/.
4 Id.

consumers or excluding them from full opportunity in the marketplace.[6] We intend to

release a report on the workshop later this year.

Second, the FTC is enforcing the laws currently on the books that address uses of

Big Data that harm consumers. One of the big messages we want to send to businesses

and the public is that there are indeed laws that apply here, and they must be followed.

These laws include the Fair Credit Reporting Act (FCRA),[7] the Equal Credit Opportunity

Act (ECOA),[8] and the FTC Act's ban on unfair and deceptive practices,[9]

landlords for use in deciding whether to provide consumers with jobs and housing.   Our

complaints alleged that these companies failed to ensure the data was accurate, or that the

purchasers had a permissible purpose to buy it, as

consumers who had applied for payday loans.[15]   We now know that these types of lists

are a big source of the phantom debt fraud we are seeing throughout the marketplace.

The FCRA also covers those who purchase and use consumer report information.

If a company buys this information from a CRA and uses it to make decisions about

consumers' employment, credit, insurance, or housing, and certain other benefits, the

FCRA applies.   This means that, among other things, companies must provide consumers

with adverse action notices if they decide to deny these benefits to consumers. Similarly,

companies also must now provide risk based pricing notices if they use consumer reports

to provide credit to consumers on less favorable terms than other consumers.   For

example, we brought an action against Time Warner Cable, and obtained almost $2

million in civil penalties, because the company used consumer reports to decide whether

to require consumers to pay a deposit on their cable bills, but failed to provide these

consumers with risk-based pricing notices.[16]

In addition to the FCRA, there is also the ECOA and the FTC Act.   The ECOA

prohibits discrimination in credit based on protected characteristics such as race, color,

gender, and age.   So, if a company makes credit decisions about individuals based on Big

Data, it could violate the ECOA if the decision leads to disparate treatment or disparate

impact on those individuals.   There's a lot more to the analysis, to be sure, but I wanted

to highlight the applicability of this important law to the Black Box.

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15 U.S. v. Teletrack, Inc., No. 111-CV-2060 (N.D. Ga. June 27, 2011), available at
https://www.ftc.gov/enforcement/cases-proceedings/102-3075/teletrack-inc.
16 U.S. v. Time Warner Cable, Inc., No. 13-cv-8998 (S.D.N.Y. Dec. 19, 2013), available at
https://www.ftc.gov/enforcement/cases-proceedings/122-3149/time-warner-cable-inc.

and others with no legitimate need for it is an unfair practice under the FTC Act. This matter is currently in litigation.

There's much more to discuss on this topic and I hope we'll be able to expand on the issues in the panel discussion. But just to plant some seeds: I am well aware that these laws have significant gaps, and are far from a perfect fit for today's marketplace. Notably, most people think wearables and health devices are covered by HIPAA, but they're not. They are, however, covered by the FTC Act. As to the FCRA, it's not always clear where marketing ends and eligibility determinations begin. And the law does not apply to businesses that use their own in-house data analytics to make decisions about their customers or employees. Also, it could be particularly challenging to address biases that are introduced in the research that forms the basis of Big Data. In addition, the ECOA is limited to credit decisions – it does not apply to discrimination in other decisionmaking. However, I think we can make some real progress by educating businesses and the public about what the existing laws do require, enforcing these laws vigorously, and also raising public awareness about what's in the Black Box. At the FTC, we are doing this, using all of the tools at our disposal.