



Big Data: A Tool for Inclusion or Exclusion? Project No. P145406

U.S. PIRG Education Fund and Center for Digital Democracy

U.S. PIRG Education Fund and the Center for Digital Democracy (CDD) respectfully submit these additional comments to the Federal Trade Commission (FTC). A set of regulatory and other safeguards is urgently required to ensure that contemporary “Big Data”-driven financial services are used in an equitable, transparent, and responsible manner. All Americans, especially those who confront daily challenges to their economic security, should be assured that their lives will be enhanced—not undermined—by the new digital-data financial services marketplace. A closer critical examination of the commercial information infrastructure in the U.S. reveals a set of well-developed and interconnected data collection and use practices that few consumers are aware of—let alone have consented to.

While the commission’s September 2014 workshop explored some of the key issues, it did not sufficiently examine the implications of current “Big Data” business practices. U.S. PIRG Education Fund and CDD urge the commission to issue a final report that addresses the issues we identify below.

1. Discriminatory practices arising from the use of “Big Data” collection, analytic and operational techniques are used every day by leading companies across market sectors, including financial, retail, consumer product goods, etc. The use of “Big Data” to make far-reaching, but invisible to the individual, decisions is becoming a routine practice, embedded into our daily experiences. The commission should critically assess the data infrastructure in place that is intruding into the lives of the public and has serious consequences for their welfare.

For example, the FTC should examine the role of “Data Management Platforms” (DMPs) and other predictive analytic data tools in use today by the banking, credit card, and retail sectors that impact a consumer’s finances. We discussed the role and capabilities of DMPs in a report filed last May in this docket.¹ A consumer’s information is made “actionable” through a series of real-time decision-making operations designed to provide an array of “intelligence” on an individual and their family. “E-scores” and other assessments that place a value or judgment on our behaviors and action—both actual and potential—are generated. Such scores, when used alone and also combined with other

databroker information, increasingly impact our financial status and economic opportunity. The FTC should acknowledge that Big Data-oriented applications applied to the consumer sphere should not be conducted in its current manner, where there is no accountability or meaningful consent.

2. Commercial data collection on an individual is growing unimpeded, fueling the Big Data consumer decision-making apparatus. Nearly every day, more and more information is gathered on an individual. Despite the FTC's work and claims that privacy is respected and protected from industry, there is an unimpeded and continuous effort to extract and tie together as many data points as possible. The foundation for much of today's Big Data analysis, used by financial and other companies, involves the ongoing gathering and assessment of an individual's "multi-channel" information—including from their use of personal computers, mobile devices, and social media networks. These data points are then combined with other online and offline data to create a robust profile that can be used in real time and is unknown to the consumer. Companies want to identify what we do and say, our location, and such details as our race/ethnicity not only to assess us as prospects and customers more efficiently, but also to be able to reach us anytime and anywhere. The FTC's own recent databroker report reflects this reality, as does the expansion of consumer tracking and profiling capabilities. Emblematic of this development is the growing role of the single comprehensive "identifier," a non-"cookie" approach that is associated with us whether we are online or using a mobile phone. In addition, the merging of financial and customer information, made possible through the linkage of credit and banking services with loyalty and reward programs, as well as the growth of hyper-location data, has created a digital "Wild West." It is important for the commission to acknowledge that despite its best intentions, the industrial harvesting of our data is further unleashing a Big Data consumer decision-making complex that requires meaningful regulation yet is clearly designed in an attempt to avoid it, unless the commission asserts its longstanding authorities to rein it back in.

3. The widespread and growing use of data-decision-making marketing technology, including programmatic advertising, enables real-time access to individuals, regardless of what device they may use. Increasingly consumer-facing corporations are now also databrokers regarding their customers and accountholders. Meanwhile, an array of B2B firms also either act as databrokers or "enhance" and massage the datasets collected by other first-party or third-party firms in this Wild West ecosystem. This opaque-to-the-consumer data collection ecosystem is no way based on the Code of Fair Information Practices. The commission's report should address the integration of Big Data collection and analytics practices with automated digital marketing technologies. The buying and selling of individuals in mere milliseconds to deliver an ad, marketing message, or offer, called "programmatic" or "audience" buying, signals a significant change in how a consumer is identified and treated in the digital marketplace. While the Workshop suggested that ads are being delivered to websites, it's more accurate to say that today, the right to reach an *individual* is what's being negotiated. Already delivering nearly 50 percent of all online display ads, and with predictions that it will dominate all digital marketing activity in two years, programmatic marketing is now a mainstream activity. The right to buy and make decisions on an individual is a major paradigm shift for how media and advertising is bought and sold, including by the financial and retail services

industries. Well-known American companies are expanding on an exponential basis the types and amounts of data they collect on individuals, including using third-party and other outside information sources. Among the uses of these data in the audience-buying process is identifying the best—as well as the least desirable—customers. There has been little public acknowledgment that some individuals are being identified as “waste,” that is, without long-term or sufficient value for a company’s offerings or services. The deliberate redlining or bypassing of a person occurs daily and has failed to receive the regulatory scrutiny this process deserves. The FTC should address the impact of the use of multiple data sets in real time through programmatic marketing technologies, especially its relationship to a consumer’s economic welfare, when used by the financial services marketplace.

4. *The combination of expanded collection of data, real-time decision-making, and use to make financially related decisions on a consumer should trigger FCRA and Section 5 violations.* Practices conducted by the commercial marketplace violate existing law, in our view. The commission should reject the spurious claims that the myriad of data collected and used on an individual is “anonymous,” “is FCRA-compliant,” “is privacy protected,” or is merely “marketing” information. A close examination of the process will reveal that such practices involve highly personal information, fails to seriously address data protection, and has material consequences—especially to Americans who must make informed and active judgments about their financial resources. As all our online and offline, first- and third-party information is bundled for analysis by banks, loan companies, supermarkets, and major chains, it has consequences for how much we spend and the products and services we are offered. The digital daisy chain of influence and attribution made possible through far-reaching alliances involving social networks, search engines, mobile networks, databrokers, and E-commerce sites—and fueled by state-of-the-art data mining hardware and software—should be the locus of the commission’s review. Viewed as a whole, it is clear that today’s Big Data environment has serious consequences for consumers, and requires action from the FTC, other regulators, and policymakers.

¹ “FTC to Examine Effects of Big Data on Low Income and Underserved Consumers at September Workshop; Project No. P145406 #00003,” 9 May 2014, <http://www.ftc.gov/policy/public-comments/2014/05/09/comment-00003> (viewed 28 Oct. 2014).