**Comments of the U.S. Public Interest Group and Center for Digital Democracy
for the FTC's "Lead Generation Workshop"**

September 18, 2015

Summary: The commission needs to analyze and address how contemporary online lead generation embodies a panoply of applications and tactics to acquire, use, and often share or sell a person's personal data. Lead generation is no longer the simple process of encouraging a consumer to fill out an online form. Today, online "lead gen," as it is called, incorporates the use of YouTube, Facebook, Twitter, search engines, mobile phones, apps, geo-location, native advertising, email, sentiment mining, data-driven audience buying (programmatic), user "scoring" methods, attribution analysis for measurement, and a network of data brokers providing instantaneous identity and other sensitive information.

The commission, in its workshop, report, and follow-up activity, should focus on the leaders of the digital data marketing industry—starting with Facebook and Google but including many others—and its use of lead generation. While there are likely many "bad" lead generator actors, as the commission's enforcement actions have already identified, we believe that the most significant threats to consumers overall arise from the growing and now endemic use of powerful, non-transparent lead-generation techniques, especially for financial products, by the leading companies in the marketplace. Unless it is subjected to some floor of enforceable consumer protection—including but not limited to transparency and real consumer choices to avoid it—lead generation will become—if it has not already—a patently unfair system of consumer manipulation and control.

Discussion: The U.S. Public Interest Research Group (USPIRG) and the Center for Digital Democracy (CDD) urge the Federal Trade Commission (FTC) to protect consumers from unfair, deceptive, and privacy-threatening practices that companies regularly use for online lead generation. The commission needs to analyze and address how contemporary online lead generation embodies a panoply of applications and tactics to acquire, use, and often share or sell a person's personal data. Lead generation is no longer the simple process of encouraging a consumer to fill out an online form. Today, online "lead gen," as its called, incorporates the use of YouTube, Facebook, Twitter, search engines, mobile phones, apps, geo-location, native advertising, email, sentiment mining, data-driven audience buying (programmatic), user "scoring" methods, attribution analysis for measurement, and a network of data brokers providing instantaneous identity and other sensitive information.[1] The growing use of online lead-generation practices by major online marketing, financial services, retail, health, and other businesses—which few consumers know about, let alone understand—illustrates the widespread adoption of this information-gathering and targeting apparatus. Unless it is subjected to some floor of enforceable consumer protection—including but not limited to transparency and real consumer choices to avoid it—lead generation will become—

if it has not already—a patently unfair system of consumer manipulation and control.

Few consumers know that when they are encouraged to provide data about themselves—when they seek a home, college or auto loan, for example—that the supposedly informational website promising attractive rates and up-to-date information is really in the business on capturing their personal information to be used or sold as a lead. Online lead-generation techniques are integrated into the digital medium, with many interconnected applications fostering ongoing data collection for lead-related profiling and targeted services (e.g., search, social media, financial digital marketing). It is unlikely that consumers understand that the desktop or mobile device site they find through search or paid and data-driven targeted advertising has been tested and its "conversion paths" refined to ensure positive responses to various forms of "calls-to-action" for leads, designed to have consumers reveal their identity.[2] Consumers could be urged, through a colorful button, to consent to a "free trial," download "free" content, enter into a "contest," or agree to an online "chat." They will not know that such a chat is connected to a strategy where they will be "brought to a lead capture form" that will give the lead company their name and email address, as well as instantly connect them to a call center.[3] Nor will they be aware that they have been secretly "scored" by an algorithm that reports an individual's lifetime worth to the lead generator's clients.[4] Lead-generation scoring incorporates the reams of data-broker information available on a consumer today in real-time that are used for verifying the identity of individuals (including their financial status).[5] Consumers' offline and online data, including from social media, can be obtained, analyzed and made—in the industry's parlance—"actionable." Consumers can be targeted online for a lead-generation campaign that uses data about their income, education, life events, and many other categories.[6] The public isn't aware that once their data are collected, they can be sent in milliseconds to determine whether an individual is, as the lead-gen business likes to say, a "hot" lead.[7] Advances in marketing automation, involving predictive analysis and other advanced data applications (some involving social media), are also contributing to the growing efficacy of online lead-generation practices. [8]

USPIRG and CDD have previously called on the commission to protect consumers from the harmful consequences of lead-generation practices, especially those that affect consumers' financial security.[9] Many of today's lead-generation practices, taken together as they are used together, should be considered violations of Section 5 of the FTC Act under either or both of its prongs—unfairness and deception.

In several of our previous filings to the commission, and through a series of briefing papers (attached to this comment) we have called for action that would ensure that economically-at-risk consumers and other potentially vulnerable groups—including, for example, members of the Spanish speaking public and college students—do not become victims of the use of lead-generation practices occurring across devices today.[10] As recent academic research illustrates, even those consumers with some knowledge of the ubiquity and dimensions of the data

collection and targeting system, have resigned themselves to being unfairly treated.[11] The commission has recognized, through its data broker report and recent workshops (such as on scoring), that consumers confront a largely invisible and far-reaching apparatus that gathers and uses their information—primarily with neither meaningful awareness of how it's used nor informed consent of those uses.[12] We call on the FTC, at its workshop, in its follow-up report, through the development of "best practices" guidance for business, as well as in its enforcement work, to help rein in harmful lead-generation practices. The commission should also devote more resources to inform consumers about the operations and techniques of online lead generation.[13]

Online lead generation in the U.S. generated nearly $2 billion in 2014, according to the Interactive Advertising Bureau (IAB), which defines online lead generation as follows:

> Fees paid by advertisers to online companies that refer qualified potential customers (e.g., auto dealers which pay a fee in exchange for receiving a qualified purchase inquiry online) or provide consumer information (demographic, contact, behavioral) where the consumer opts in to being contacted by a marketer (email, postal, telephone, fax). These processes are priced on a performance basis (e.g., cost-per-action, -lead or -inquiry), and can include user applications (e.g., for a credit card), surveys, contests (e.g., sweepstakes) or registrations.[14]

The commission should note that the leading business segments for online marketing revenues and expenditures—retail, financial services, and the automotive sectors—significantly use online lead-generation tactics. So do the leaders in the digital media business—including Google, Facebook, and Twitter, for example. The commission, in its workshop, report and follow-up activity, should focus on the leaders of the digital data marketing industry and their use of lead generation. While there are likely many "bad" actors (some of which have already been the subject of FTC enforcement action), we believe that the most significant threats to consumers overall arise from the use of lead generation, especially for financial products, by the leading companies in the marketplace. Facebook, for example, tells advertisers, including those selling "financial services" or engaging in "retail," "ecommerce," "auto" sales, or "professional services," that they can generate "applications, pre-orders, sign-ups (deals and coupons)," and more via lead generation. Among the "fields" of data Facebook suggests advertisers should use to succeed in lead generation are consumers' "name, email, phone, street address, qualifying questions, [and] what product or service they're interested in." Facebook has "six call-to-action buttons available for lead ads," including "sign up, subscribe, learn more, apply now, get quote, and download."[15] Illustrating how financial services companies use Facebook for lead generation, including sophisticated and purposely obtuse data-targeting strategies, insurance company MetLife, working with data broker/ad company Merkle, recently reported that instead of purchasing banner ads to sell its life insurance products, "now we are buying people." "Using

Facebook's performance data and targeting methods," testing "600 variations" of the ad to help perfect lead performance, linking its own data for Facebook targeting (including through the incorporation of user-tracking "conversion pixels placed on" MetLife's "own landing page and website homepage"), the campaign increased its "lead-to-sale ratio."[16] It also used this lead-generation activity to engage in "look-alike" targeting (where consumers are identified when they share characteristics or behavior with those who have responded favorably, in this case to MetLife's lead-generation Facebook effort. Such look-alike targeting is an example of how today's lead-generation practices can implicate consumers in new ways, identifying individuals even if they haven't been an original target of the lead-gen campaign.[17] The use of Facebook data, including outside sources, to target its users and their networks of friends for lead-generation-related practices should be investigated, including how Facebook's consent decree with the commission may be implicated.

Google's key businesses are all involved in some form of lead generation, including its search, YouTube, DoubleClick, and mobile products. Its "Best Practices for Generating Leads" includes advice on keyword acquisition and landing-page optimization, incorporating "conversion tracking" ("to see how effectively your ad clicks lead to valuable customer activity, such as website purchases, phone calls, app downloads, newsletter sign-ups, and more") and ways to ensure against "fake leads."[18] Google has singled out the mobile device in successful online lead generation for a company that "provide(s) leads to credit repair services" (and operates CreditRepair.com and LexingtonLaw.com). That credit industry lead-gen company gathers leads via mobile and desktop, using "mobile search, display, in-app advertising," and "click to call extensions" that facilitate the consumer contacting the call center. Leads from mobile phones were specifically routed "to salespeople who are experts at educating potential customers on the complexities of credit repair" and the products the company offered. [19]

Through behavioral retargeting, which Google has disingenuously sanitized by renaming it "dynamic remarketing," the company has highlighted how an online lead-generation company serving the auto industry secured leads via user tracking through AdWords. In another example of how lead-generation techniques reflect advances made in digital marketing, an automotive lead-gen company is able stealthily to track and analyze consumers' online behavior and have an advertisement continually transform "its content … providing even more quality leads to its dealer partners." In a case study, Google documents how the combination of behavioral retargeting and "dynamic" changes in the ad copy reflecting the analysis of a person's online interactions lead to significant "conversions" for leads, including on mobile and desktop devices.[20] Google's TrueView ads for YouTube also generate leads, the company explained, by incorporating "product demos and testimonials … as [consumers] browsed YouTube videos." The use of YouTube, as well as via AdWords, according to a Google case study, "helped the company generate thousands of new leads."[21]

Google has highlighted how a for-profit automotive trade school used TrueView ads on YouTube, combined with a range of data-profiling tactics to target males 18-24. Explained an official from the trade school on the success of its lead-generation campaign using online video, "If you look at their behavior on the Internet, you'll see that watching videos on YouTube is one of our target audience's highest ranking activities. Since that is where they are, that is where we need to be." The school relied on Google's ability to provide it with "targeting layers" to reach young auto enthusiasts, helping deliver higher enrollments.[22]

Google has also discussed the role that its "Google Analytics" products play for successful online lead generation, including when they are bundled into a lead strategy that incorporates a "real-time personalization product to identify characteristics of … website visitors."[23] The DoubleClick division of Google is also involved in promoting "online-offline lead generation" that helps integrate search marketing with an analysis of consumers' mobile or landline phone number, location, demographic data, and responses.[24] We also urge the commission to investigate the role that lead generation plays in Google's data gathering and targeting of consumers. The commission should analyze Google's lead-gen activities as well for possible consent-decree violations.

The latest data technologies are now used for lead gen. Lead generators have created "exchanges" where leads are bought and sold in milliseconds.[25] As Publicis-owned Vivaki recently explained, the growing sophistication and capabilities of todays' "Ad Tech Stack," which processes consumer and other data in real time, can "seamlessly connect brand activity with lead generation."[26] Exchange data platforms offer leads for sensitive consumer products, including insurance. When consumers confront an invisible data-driven system that gathers, analyzes, and predicts their likely behaviors and operates in lightening speed, there need to be safeguards put in place. The commission should investigate online lead-generation programmatic business practices. This analysis should address how individual consumers are purchased and sold, including a consumer's "value" (i.e., the amount spent for a particular lead). In its report and best practice guidance, the commission should identify why some individuals may be bought or sold for less or more than others, including what criteria are used—such as income, location, and ethnicity.[27]

USPIRG and CDD respectfully urge the commission to address at the workshop the impact that online lead generation has on economically at-risk consumers. As the commission's previous enforcement actions illustrate, payday and other high-cost loans are sold to consumers using a range of unfair and deceptive lead-gen tactics.[28] The New York State Attorney General, in a recent case, explained how such practices contributed to consumers being "trapped in destructive cycle of debt."[29] We have attached to this comment our recent report that addresses this practice, which provides further details on how payday and other high-cost loan led-gen targeting operates today.[30]

Young people are being targeted by private, for-profit colleges and trade schools so they will take out loans for often exorbitant tuition and fees. As the commission also knows, many of these programs encourage students to rack up significant debt for programs that often fail to provide meaningful career or advancement opportunities.[31] Students of color are often key targets of the for-profit school industry.[32] As USPIRG and CDD describe in our May 2015 overview of the private, for-profit school and lead generation marketplace, there are a myriad of unfair and deceptive tactics used to lure these young people into a system that undermines their economic security.[33] From an informational website claiming to help find scholarships, to the stealth use of data tracking and targeting in order to place an alluring pitch on their mobile phone, to special pitches for veterans or those still in the military, the use of "predictive modeling" to score and identify "high-value prospects" (and also via Facebook's ad products), online lead generation plays a major role undermining the hopes and dreams of aspiring Americans. The use of online lead generation for the for-profit college market should be addressed at the workshop, and through subsequent action, including enforcement.

Finally, we also urge the commission to address how multicultural Americans, including Hispanics and African Americans, are especially targeted by lead generators. Many multicultural Americans are in the forefront of using digital products, including mobile devices. Lead generators have examined this market in order to take advantage of these groups. A largely invisible lead-gen system that focuses on Hispanics, including Spanish-speaking Americans, exists. USPIRG and CDD refer the FTC to our recent report on this issue.[34] Given the diversity of the country, and its changing demographics, we call on the commission to place a spotlight on multicultural lead-generation practices at the workshop and through the commission's subsequent work on this issue.

We strongly support the FTC's efforts to make online lead-generation practices visible and accountable.

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[1] See, for example, https://blog.kissmetrics.com/using-video-metrics/; https://business.twitter.com/solutions/lead-generation-card?lang=en&location=na; http://www.salesforce.com/company/news-press/press-releases/2014/11/141119-2.jsp; https://smallbusiness.yahoo.com/advisor/pros-online-lead-generation-155540270.html; https://positivebusinessonline.com/services/lead-generation/; http://www.marketo.com/definitive-guides/lead-generation/; http://www.revimedia.com/lead-blog/mobile-lead-gen/.

[2] http://www.marketo.com/cheat-sheets/30-things-to-ab-test-for-lead-generation/; http://blog.hubspot.com/marketing/how-conversion-paths-work-faq.

[3] http://blog.hubspot.com/marketing/optimize-website-for-lead-generation; http://blog.marketo.com/2014/02/6-must-have-website-calls-to-action-that-are-sure-to-convert.html.

[4] http://www.datamyx.com/consumer-services-marketing-lead-scoring;
http://www.ebureau.com/b2c/marketing-lead-management.

[5] https://www.neustar.biz/services/customer-intelligence/lead-intelligence;
http://thepma.org/how-to-develop-lead-scoring/;
http://www.chiefmarketer.com/developing-sophisticated-lead-scoring/;
http://www.netmining.com/marketing-technology/.

[6] https://www.neustar.biz/services/activation/targeting;
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[7] http://www.leadid.com/blog/real-time-lead-generation-its-inevitable;
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[8] http://www.salesforce.com/sales-cloud/marketing-lead-tracking-solutions.jsp;
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[9] https://www.ftc.gov/policy/public-comments/comment-00006-75;
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[10] https://www.democraticmedia.org/article/online-lead-generation-what-you-need-know-protect-yourself-companies-business-secretly;
https://www.democraticmedia.org/article/private-profit-colleges-and-online-lead-generation; https://www.democraticmedia.org/article/targeting-hispanics-leads-digital-big-data-era-may-2015.

[11] http://www.nytimes.com/2015/06/05/technology/consumers-conflicted-over-data-mining-policies-report-finds.html?_r=0.

[12] https://www.ftc.gov/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014; https://www.ftc.gov/news-events/audio-video/video/spring-privacy-series-alternative-scoring-products.

[13] That should even include how lead generators get paid, such as "pay-for-performance," "pay-per-click," "pay-per-call," "pay-per-lead," etc.

[14]
http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-042215.

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[16] https://www.facebook.com/business/learn/facebook-ads-website-conversions/.

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[19] https://www.thinkwithgoogle.com/case-studies/mobile-sales-for-progrexion-grow-with-google-mobile-ads-and-click-to-call.html.

[20] http://apac.thinkwithgoogle.com/case-studies/dynamic-remarketing-increases-conversions-for-dealix.html. Another case study from Google also addresses this practice for lead generation: https://think.storage.googleapis.com/docs/builddirect-builds-awareness-drives-sales-with-gdn_case-studies.pdf.

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[28] http://www.uspirg.org/blogs/eds-blog/usp/cfpb-ftc-take-separate-actions-against-two-illegal-online-payday-cash-grabschemes

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[30] http://www.uspirgedfund.org/reports/usf/online-lead-generation.

[31] https://www.insidehighered.com/news/2015/09/11/study-finds-profit-colleges-drove-spike-student-loan-defaults; http://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-career-colleges.

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