

BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, & TRANSPORTATION

HEARING ON

**“WHAT INFORMATION DO DATA BROKERS HAVE ON CONSUMERS, AND
HOW DO THEY USE IT?”**

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TESTIMONY OF

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I. Introduction

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, good afternoon and thank you for the opportunity to testify before you today.

My name is Jerry Cerasale. I am the Senior Vice President of Government Affairs for the Direct Marketing Association (“DMA”), the world’s largest trade association dedicated to advancing and protecting responsible data-driven marketing. Today, I am pleased to testify on behalf of the DMA and to discuss with the Committee the important role that marketing data and database compilers play in aiding consumers and fueling the United States economy.

Founded in 1917, the DMA (www.thedma.org) represents thousands of companies and nonprofit organizations that use and support data-driven marketing practices and techniques. On behalf of its member companies, the DMA advocates industry standards for responsible marketing; promotes relevance as the key to reaching consumers with desirable offers; and provides cutting-edge research, education, and networking opportunities to improve results throughout the end-to-end direct marketing process.

My testimony today will describe the value that marketing data has across the U.S. economy and affords to consumers. I will also explain how marketing data is collected and how DMA members, including data compilers, responsibly use and share this data to serve consumers. Lastly, I will explain how DMA and its member companies are subject to our longstanding and enforceable self-regulatory framework, the *DMA Guidelines for Ethical Business Practice* (“DMA Guidelines”).

II. The Value of Data

Responsible collection and sharing of marketing data is critical to today's information economy. When data is used to fuel data-driven marketing, these practices provide many benefits for job growth, entrepreneurship and innovation, as well as to individual consumers.

A. The Value of Data to the U.S. Economy and American Workforce

A recent study entitled, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* ("Value of Data"), quantifies the critical role that the use and sharing of marketing data plays in fueling economic growth.¹ Commissioned by DMA's Data-Driven Marketing Institute and conducted independently by Professors John Deighton of Harvard Business School and Peter Johnson of Columbia University, the study revealed that the Data Driven Marketing Economy ("DDME") generated \$156 billion in revenue to the United States economy and fueled more than 675,000 jobs in 2012 alone. Further, the study found that an additional 1,038,000 people owe their employment to these DDME jobs.² The study estimated that 70% of the value of the DDME – \$110 billion in revenue and 475,000 jobs nationwide – depends on the ability of firms to share data across the DDME. If this ability to share data were curtailed, those jobs and revenue would be impacted and the U.S. economy would be much less efficient.

The DDME is a uniquely American creation, and today data-driven marketing is an important U.S. export. Just as the United States led the world when Montgomery Ward developed the first mail order catalog in 1872, and created digital market-making media by commercializing the Internet browser in the 1990s, today the United States is at the forefront of data-driven market growth. The *Value of Data* study found that the United States leads the

¹ Deighton and Johnson, *The Value of Data: Consequences for Insight, Innovation & Efficiency in the U.S. Economy* (2013), available at <http://ddminstitute.thedma.org/#valueofdata> (hereinafter "*The Value of Data*").

² *The Value of Data* at 74.

world in data science applied to the marketplace, with DDME firms deriving up to 15% of their revenue overseas, while employing nearly all of their workers inside the United States.³

The *Value of Data* study also found that database compilers are an important piece of the DDME. For instance, list services and database marketing input providers added \$7 billion and 31,000 jobs to the United States economy.⁴ They were able to do this by combining data that they receive from various sources to create marketing opportunities. Database compilers derive most of their economic effect from their ability to share this data with marketers that, in turn, can provide consumers with more relevant advertisements.

B. The Value of Data to Entrepreneurship and Innovation

The use of data inspires new technological designs and fosters entrepreneurship in the process. According to the *Value of Data* study, the bridge between an idea and its implementation at scale is considerably shorter in an information economy than in an industrial economy.⁵

The DDME, and the services offered by database compilers, are essential to the success of start-up companies and other small businesses. The *Value of Data* study found that the sharing of data across the DDME enables small and innovative businesses to compete effectively with big players, launching innovative offerings using data. Data gives all companies, and especially small businesses, the ability to effectively match products to customers both online and offline, thereby lowering barriers to market entry for specialized or niche offerings that previously could not have succeeded.

³ *The Value of Data* at 21.

⁴ *The Value of Data* at 53-54.

⁵ *The Value of Data* at 78.

C. The Value of Data to Individual Consumers and Companies

Consumers demand personalization, and enterprises that know their customers better can also serve them better. Data-driven marketing is about discerning what customers want and need and engineering the company to provide it. Consumers benefit from companies' responsible collection and analysis of user data by receiving timely and relevant offerings through the marketplace and products designed to meet their needs. In this way, consumers enjoy a more informed and effective shopping experience, which saves them both time and money.

According to the *Value of Data* study, the efficiency that data brings to the practice of marketing also bears directly on consumer welfare. Marketing absorbs a significant percentage of manufacturer revenues, meaning that marketing costs can increase the price that consumers pay for food and household products by up to \$25 in every \$100 spent. When marketing is informed by data, it is more efficient and some of this value flows back to consumers in the form of lower prices.⁶

In short, the flow of data throughout the DDME is creating consumer-driven companies. Data sharing promotes competition and entrepreneurship. In the process, jobs are created across the United States and consumers are exposed to an array of new products and services that would be unavailable or unknown to them absent data-driven marketing.

III. The Responsible Collection and Use of Consumer Data

Marketing data comes through a variety of sources. It is analyzed by marketers to make predictions about likely consumer preferences to guide marketing campaigns.

A. Marketing Data Collected Directly from Consumers

A common source of marketing data is data obtained by businesses from direct interaction with customers. When a customer purchases goods in a local store or shops online,

⁶ *The Value of Data* at 75.

data about that purchase is gathered by the marketer. Marketers use data from other sources, including information from public records and other publicly-available sources, such as U.S. Census data. Marketing data may also include self-reported information that consumers choose to provide through surveys. Marketing data does not include the types of information that create a risk of identity theft or fraud to consumers, such as financial account numbers or social security numbers.

B. Responsible Uses of Marketing Data

Marketers use marketing data to understand their existing customers better or to identify prospective new customers, in order to predict what types of offers are most likely to be valued by them. For example, a local hardware store would want to send a coupon for a discount on a lawnmower to a new home buyer with a lawn and a different coupon for paint to a condominium buyer. Data will help this small business to be more efficient in its advertising and provide more value to consumers. Marketers may also use data to make other decisions related to their businesses, such as what products to develop and offer in the future or where to locate new retail outlets.

Data used for marketing is also “modeled” or inferred information that represents a statistical prediction about consumers and does not necessarily reflect the actual characteristics of one consumer or household. For example, based on public property records and U.S. Census data that is aggregated at the Zip Code or census tract level, database compilers may estimate the average age of a dwelling in a certain ZIP code. Marketers, such as a local roofing company, can then use this information to make offers that are more likely to be valuable to households in that ZIP code.

C. Marketing Data is Not Used for Eligibility Purposes

It is important to note that there is a difference between using data for marketing purposes and using data for eligibility purposes. The use of data for eligibility decisions related to credit, insurance, and employment is regulated by the Fair Credit Reporting Act (“FCRA”). The FCRA requires companies that make such decisions to offer consumers certain disclosures about, and access to, the data used to make those decisions.

In contrast, the use of data for marketing purposes is not used to make decisions that impact whether a consumer can obtain credit. The Federal Trade Commission (“FTC”) agrees that entities that maintain data for marketing purposes do not need to provide consumers with individualized access to marketing data, unlike consumer report data.⁷ Instead of determining a consumer’s ability to receive a loan or get a job, the use data for marketing purposes determines which coupon or advertisement he or she receives. The FCRA recognizes the difference in these uses, which is why marketing is not included in the types of activity that require increased levels of disclosure and access.

In addition, some policymakers have raised concerns that data collected for advertising purposes could be used as a basis for employment, credit, health care treatment, or insurance eligibility decisions. In fact, these are hypothetical concerns that do not reflect actual business practices. Nevertheless, industry has stepped forward to address these concerns by expanding its codes of conduct to clarify and ensure that such practices are prohibited and will never occur.⁸ This prohibition will help to ensure that consumers’ browsing histories will not be used against them when applying for a mortgage, job, or insurance, or when seeking health care.

⁷ *Protecting Consumer Privacy* at 65-66.

⁸ See Digital Advertising Alliance’s *Self-Regulatory Principles for Multi-Site Data* (2011), available at <http://www.aboutads.info/resource/download/Multi-Site-Data-Principles.pdf>.

IV. The Value of Self-Regulation in the Data-Driven Marketing Economy

The DMA and its members are firmly committed to advancing responsible data practices across the DDME. Our members deeply value consumer trust and understand that responsible data practices are critical to building and maintaining customer relationships. To that end, the DMA believes that self-regulation and education are important components for addressing consumer privacy while ensuring that data flows continue to benefit consumers and the economy.

A. The DMA Guidelines for Ethical Business Practice

The DMA has a longstanding and enforceable self-regulatory framework. The DMA, working with its members, implements and enforces a set of best practices known as the *Guidelines for Ethical Business Practice* (“DMA Guidelines”). The *DMA Guidelines*, which have been in place for more than four decades and are a condition of membership in the DMA, provide DMA member companies with standards for responsible marketing practices by explaining how companies should provide transparency, choices, and other protections to consumers. The DMA regularly updates its guidelines to adapt to new technologies and marketing practices.

There are more than 50 code sections in the *DMA Guidelines* that regulate marketing data practices. I would like to focus on a few key examples relevant to the subject of this hearing, and to database compilers in particular.

1. Transparency

Transparency around data practices is a core principle of the *DMA Guidelines*. For example, privacy policies are the primary way that companies provide consumers with information about their data practices. These policies typically provide consumers with detailed

information regarding what data is collected, how it is used, and the choices that may be available to consumers. The *DMA Guidelines* require that these policies be made accessible via online and offline channels, and be easy to read and understand. The *DMA Guidelines* also require members to periodically keep existing customers aware of the nature of the use of their data, and how that use may have changed.

2. Choice

DMA members have long offered consumers the ability to opt out of marketing. The *DMA Guidelines* require data-driven marketers to honor within 30 days any request by a consumer to opt out of any use or sharing of their data for marketing purposes.

In addition to the choices available from individual member companies, the DMA offers a centralized choice tool for consumers at DMAchoice.org. This service allows consumers to opt out of direct mailings and to refine what categories of mail they receive. Also at this website, consumers can remove their email address from national mailing lists. Through these programs, the DMA provides consumers with an easy way to make informed choices about the marketing they wish to receive.

The DMA's commitment to consumer choice also extends to online interest-based advertising. The *DMA Guidelines* require third party data collectors to provide consumers with the ability to exercise choice with respect to the collection, use and transfer of information for online interest-based advertising purposes. This choice must be provided online and made available to consumers as specified in the *DMA Guidelines*.

3. Access

Consistent with the FTC's views on individualized access to marketing databases, the *DMA Guidelines* do not require members to allow consumers to access individual records within

marketing databases. The DMA agrees with the FTC that the costs of providing such access would outweigh the consumer benefits. The DMA is also concerned that in order to allow consumers the ability to access and correct data, marketers would have to collect and store additional personally identifying data needed to authenticate consumers prior to access. In addition, as noted, much marketing data is actually modeled or predicted data that would not be meaningful to consumers. The DMA therefore believes that its current guidelines around transparency and choice strike the correct balance between consumer control and marketing needs to encourage the continued growth and success of the DDME.

4. Guidelines Specific to Database Compilers

The *DMA Guidelines* include a section outlining specific requirements for database compilers that assemble and share personally identifiable information about consumers but do not have direct relationships with those consumers.⁹ For example, these compilers must, when requested by a consumer, suppress that consumer's data from marketing databases. They must also disclose the nature and sources of a consumer's data upon request, and they must allow their marketing customers to divulge the compiler as the source of their marketing data. The database compiler must additionally monitor the use of their databases to assure compliance with the law and the *DMA Guidelines*. A database compiler that discovers a violation of the law or the *DMA Guidelines* may not "turn a blind eye" but should stop providing data to that customer and either require compliance and/or refer the matter to the DMA or law enforcement.

B. Enforcement

The DMA has a long history of proactive and robust enforcement. The *DMA Guidelines* have been applied to hundreds of direct marketing cases concerning deception, unfair business

⁹ Direct Marketing Association, *DMA Guidelines for Ethical Business Practice* at Article 36, available at <http://thedma.org/compliance/>.

practices, personal information protection, and other ethics issues. The DMA enforces compliance with the *DMA Guidelines* upon both DMA member and nonmember organizations across the DDME. In addition, companies that represent to the public that they are DMA members but fail to comply with the *DMA Guidelines* may be liable for deceptive advertising under Section 5 of the FTC Act and comparable state laws.

The DMA receives matters for review in a number of ways: from consumers, member companies, non-members, and consumer protection agencies. Complaints referred to the DMA's Ethics Operating Committee are reviewed against the *DMA Guidelines* and if a potential violation is found to exist, the company will be contacted, investigated, and advised on how it can come into full compliance. Most companies work with the Ethics Operating Committee voluntarily to cease or change the questioned practice.

However, if a member company does not cooperate and the Ethics Operating Committee believes there are ongoing violations of the *DMA Guidelines*, it can recommend that action be taken by the Board of Directors and can make case results public. For example, in the period spanning February 2012 through June 2013, the DMA Corporate & Social Responsibility Committee reviewed 55 cases and 12 of these were made public. Additional Board actions could include public censure, suspension or expulsion from DMA membership. The DMA also refers cases to federal and state law enforcement authorities for review when appropriate.

C. Business and Consumer Education

To help educate marketing professionals, regulators, and other interested parties about the *DMA Guidelines*, the DMA regularly issues a case report that summarizes questioned direct marketing promotions and how enforcement cases were administered.¹⁰ The DMA also provides

¹⁰ Direct Marketing Association, *DMA Annual Ethics Compliance Report 2012-2013* (2013), available at <http://thedma.org/compliance/>.

member education regarding the *DMA Guidelines* through webinars, in-person seminars, and regular written communications to members.

In addition to educating member companies about their responsibilities under the *DMA Guidelines*, the DMA frequently offers conferences, webinars, courses, seminars, and written materials to keep companies up to date about new legal and policy developments. These efforts help companies, especially small businesses, to comply with the host of restrictions that govern data-driven marketing.

Finally, the DMA commits resources to educating consumers directly about marketing practices and the choices available to consumers. A section of our website is dedicated to “Consumer Help” and provides consumers with access to the centralized DMACHoice.org tool for managing their direct mail and email preferences as well as a wealth of information about how marketing works.

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The *Value of Data* has helped us to quantify what marketers have long known – the use and sharing of data for marketing provides tremendous benefits for the U.S. economy and the American workforce, for small and large businesses, and for individual consumers and society as a whole.

Thank you again for inviting me to testify today, and I look forward to answering questions from the Committee.