

House Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
Subcommittee on Commerce, Trade and Consumer Protection
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Re: Exploring the Offline and Online Collection and Use of Consumer Information

Statement of
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STATEMENT OF MICHELLE BOUGIE

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Mr. Chairmen and Members of the Subcommittees, thank you for the opportunity to provide testimony on the implications of regulation of the collection and use of consumer information for the small business community. My name is Michelle Bougie and I am the Senior Internet Marketing Manager of Learning Resources, Inc. of Vernon Hills, Illinois, a manufacturer and distributor of educational materials and educational toys. We employ 150 people and sell our products in over 80 countries. We maintain a website with a web store and also have a direct mail program for schools and teachers and for consumers.

At our company, we take the privacy of our customers very seriously. We have long had a clear privacy policy available for consumers to review online, and provide various opt-out options for consumers who choose to not participate in our marketing activities. In addition, we offer consumers the ability to review and comment on the information we gather. This is standard industry practice and is intended to build confidence in the products and services we offer. Our Privacy Policy is available online at <http://www.learningresources.com/category/customer+service/privacy+and+security.do>.

We developed our privacy policy based on our review of Federal and State law, as well as voluntary industry practices such as the recommendations of the Direct Marketing Association. We also must make sure our policies are competitive with other merchants. These privacy practices are a necessary part of being a trusted supplier to our customers, as well as to remain competitive in the evolving e-commerce marketplace.

Our company has used consumer information in many ways over the years. In direct mail, it is customary to “rent” or exchange names and addresses for prospecting based on various

criteria that the owner of the lists has accumulated, such as date of last purchase, kinds of products purchased, home location, job title, and so on. The lists of names remain the property of the list provider (it is their valuable intellectual property), so in direct mail, we cannot retain the names – and normally don't even see them.

In the online world, we use data that we develop, or gain access to data maintained by other companies, to make targeted offers to prospective customers. The online “ad word” market depends on having access to consumer behaviors. Various providers present opportunities to make targeted offers or pay-to-click advertisements based on consumer data. Again, these data are useful for broadening the market for our products and services.

As a small business, we are concerned about possible regulation of online and offline collection and use of consumer information. There are several reasons for this concern:

a. **Small Businesses Need Access to Consumer Data to Grow.** The use of consumer data for marketing purposes is as old as mail itself. Direct mail companies rent or exchange names and addresses to facilitate company growth. This value-added, cost-effective process allows direct mail to be competitive with physical stores and to keep costs low while contributing to a higher standard of living for all Americans.

Prospecting with consumer data is not a one-sided opportunity for the business community. Our ability to reach customers interested in our products and services adds value to consumer choices and keeps the cost of product acquisition as low as possible. The greatest challenge a small business faces is finding those people who can benefit from its products and services. By the same token, many consumers have a hard time finding niche manufacturers focused on their needs. Through the use of consumer data, small businesses are able to reach across the entire economy to match up with consumers who want their products and services but may have never known where to get them. For an education company like ours, the urgency is real – many of our customers are school teachers or parents of special needs children. The

markets we sell into are small niches with very specific, technical needs. Consumers in these niches very often feel isolated and in some cases, abandoned. It is important that they have the option to consider our wares – it could make all the difference to a special needs child.

b. **Mass Market Competition Would be Overwhelming without Access to Consumer Data.** Many small businesses start in a bedroom, a garage, the trunk of a car. How does a great idea go from the dining room table to an organization of hundreds or even thousands of people? Small businesses go through a delicate winnowing process as they fight their way upstream against much larger, better-capitalized competitors. One of the serious natural disadvantages of small businesses is access to consumer data, which we are dependent on to grow our business, as we are too small to generate this information efficiently ourselves. Mass market companies who are able to use their large market footprint or high store count to operate independently of other people's data enjoy an inherent advantage over small businesses who need this data to "prospect". It is the exceptional small business that has the means to generate sufficient prospecting data to grow consistently.

To compensate for this deficiency, a marketplace developed to make this data available for use. Small business must acquire the right to use consumer data, such as names and addresses or buying patterns, to compete with much larger entities that generate or control that data themselves.

We have considerable fear that legislation to protect consumer privacy will create insurmountable advantages for larger companies who accumulate and use consumer data in their own businesses. It is not enough to distinguish between First Party and Third Party uses of consumer data. In today's economy, there are many vertically-integrated companies designed to exploit the value of consumer data entirely within their own selling organizations. If we cannot rent, access or use similar market data, those larger companies will be granted a form of monopoly that could devastate small businesses and give them unprecedented control over

consumers. Privacy legislation, if designed the wrong way, could make this disadvantage permanent.

c. **Consumers Have Not Objected To Our Privacy Practices.** We have long offered consumers the right to opt out of our data collection and use practices. This option is seldom used and, likewise, we seldom receive consumer complaints. Our consumers have not told us to change our policies, even though the Internet has put the consumer in charge.

Notably, the security of certain information, like financial information, medical information, sexual preference, etc., must be preserved, but is frankly not an issue in our businesses. Again, consumers have not expressed concern over our handling of this sensitive data.

The possible regulation of consumer information collection and use may create a new form of tort, exposing small businesses to new liability and litigation expense. Managing a new kind of tort liability is a distraction that small business owners do not need, and may not be able to afford. In our experience, the voluntary practices of the industry have proven powerful and effective. The introduction of new liability may only create a disincentive to trade and act as a significant market depressant that would further hurt small business.

d. **Opt-in's Have Limited Value.** We currently offer an opt-out option for consumers who don't want to participate in our marketing programs or data collection efforts. This method is endorsed by the Direct Marketing Association and has proven satisfactory to our customers. Opt-in methods may be suitable for certain sensitive data that could be used to commit fraud or identity theft, such as credit card information, or protected data like health care information, but would considerably reduce the accumulation of usable marketing data if applied to all consumer data. Nevertheless, it is essential that small businesses have access to other companies' data to prospect and expand their customer ranks. If accumulation of data in the market is reduced because of privacy legislation or if our access to third party data is truncated,

the ability of small businesses to compete and grow, by reaching consumers who really need our products and services will be substantially reduced. Consumers, in turn, will also find it harder and more expensive to find the products or services they need.

We believe most consumers facing a possible “opt-in” choice do not understand the mechanics of a direct marketing business, and thus would be suspicious of any request to accumulate or use consumer data. Even though it is innocuous, it may sound ominous. We believe most consumers would decline an opt-in choice because they would not understand the value they receive by participating in these programs. For this reason, we believe an opt-out option is by far the better choice.

It is worth noting that the National Do Not Call Registry is an opt-out program. See <https://www.donotcall.gov/>. The program gives consumers the power to stop unsolicited telemarketing calls, but they must first take simple, positive action to be excluded. Clearly, if Americans had to opt-in for telemarketing calls, the entire telemarketing industry would be jeopardized. No one would volunteer for telemarketing calls. The same issue confronts small businesses in the regulation of the collection and use of online and offline consumer data.

Recommendations and Conclusion:

We recommend that industry self-regulation be encouraged and relied upon. The current practices on the Internet and by direct marketing merchants provide strong protection to consumers. In addition, these guidelines are sensitive to individual needs and have evolved as the marketplace has changed, with marketplace forces keeping these practices sharp and competitive. Unless these mechanisms fail consumers, it is far more efficient and less economically burdensome to allow the effective industry self-regulation process to continue.

If Congress elects to regulate the collection and use of consumer data for marketing purposes, it must be careful to avoid unintended consequences. The economy is both highly complex and rapidly changing. The risk of broad scale changes in the privacy rules is creation of

a federally-mandated disadvantage for the small business community in the online and direct mail marketplace. This would hurt job creation and the vibrancy of the economy. We urge Congress to take a “crawl, walk, run” approach by taking limited action now. The example of the Do Not Call Registry, an opt-out mechanism, is a good way to start, if further regulation is deemed necessary.

Thank you for considering my views on this important subject.