

ON THE DATA TRAIL:

**How detailed information about you gets into the hands of
organizations with whom you have no relationship**

A REPORT ON THE CANADIAN DATA BROKERAGE INDUSTRY

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Executive Summary

There is a large and vibrant trade in the personal information of Canadian consumers, both within Canada and more widely in North America. The driver of this trade is the direct marketing industry, an outgrowth of competition among retailers to capture and retain consumers. While many organizations choose not to share their customer information with others, many other organizations consider the benefits of such sharing (whether monetary or in-kind) to outweigh the costs. Hence, an entire industry has developed around the gathering and sale of consumer information, the analyzing and enhancing of customer databases, and the sharing of customer lists.

Facilitating this trade are an array of companies that specialize in, among other things, list management and brokerage, geo-demographic population profiling, database analytics, individual consumer profiling, survey-based data-gathering, and multi-source data-mining. These companies assist retailers in developing and executing marketing campaigns, as well as in "customer relationship management". They also assist organizations with leveraging their customer data, both for internal use and for renting or selling to third parties.

In some cases, information is traded directly between data owners and data users. Such direct trading occurs most commonly among corporate affiliates, as well as non-profit organizations who frequently exchange lists with each other in order to reach out to new potential donors. It is also facilitated by at least one "data cooperative" active in Canada, through which member organizations have access to consumer data provided by other member organizations.

Much of the consumer data traded commercially is aggregated and not particular to individuals, often taking the form of profiles of geographic groups of individuals – groups as small as 15 individuals in the case of credit bureaus. Postal codes are commonly used as the basis for group profiling. Such geographically defined "group data" may then be linked to individuals on the basis of their address.

Most consumer data is offered for rent or sale in the form of a list of names and addresses of individuals who meet certain criteria (e.g., have purchased books on gardening in the past year, or have demonstrated an interest in outdoor pursuits). Thousands of such lists are available for rent. The lists may include telephone numbers and email addresses in addition to postal addresses. They may also include any number of "selects" such as location, gender, age, ethnicity, presence of children, income, home value, credit card ownership, credit status, buying patterns, and hobbies. While single-source lists of customers are still widely-used, industry players are increasingly able to offer multi-sourced lists, given the availability of geo-demographic profile data based on census results and other surveys.

Sources of consumer data include a variety of retailers and service providers such as magazines, newspapers, mail order retailers, email and other subscription services, travel agencies, product manufacturers (via registration/warranty cards), online educational and information services, and payment processing companies. Some charitable and non-profit organizations also make their member and donor lists available for rent. In addition, a number of companies specialize in the sale of personal consumer data gathered via surveys and contests.

Individuals thus give up their personal data, wittingly or unwittingly, in various capacities: as purchasers, subscribers, registrants, members, cardholders, donors, contest entrants, survey respondents, and even mere inquirers.

While the gathering and use of personal data for target marketing purposes may be relatively harmless, it raises significant privacy concerns. In particular, the increasing accumulation of personal data and consolidation of databases leaves individuals vulnerable to abuses by those with access to the data. Potential uses of this data are limited only by law and ethics. With this in mind, the findings of this study raise important questions about whether those using and disclosing consumer data have obtained valid consent from the individuals concerned; about what uses, other than marketing and fundraising, are made of this consumer data; and about the adequacy of the Personal Information Protection and Electronic Documents Act in providing individuals with meaningful control over their personal data in the marketplace.

This report describes how detailed personal information about Canadians ends up in the hands of direct marketers and others with whom the individual has no relationship. It does not assess the data brokerage industry's compliance with privacy laws; another parallel study by CIPPIC, *Compliance With Canadian Data Protection Laws: Are Retailers Measuring Up?*, focuses on that issue.

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INTRODUCTION

Each of us means different things to different people. To some, we are mothers, fathers, daughters and sons—family. To others, we are colleagues and co-workers, friends and neighbours. To others still, we are team-mates, coaches, and competitors. We are students and teachers. We are mentors and role-models. We are citizens, all.

Yet it is another role that each of us plays that has attracted a great deal of attention of late. There is an entire industry whose focus is on studying the behaviours, preferences and decisions we exercise while acting in this role. The role, of course, is that of the consumer. Companies operating in this industry—the data brokerage industry—are keenly interested in mothers and fathers *as consumers*—for this helps them identify what products and services these people might buy. They are interested in the places colleagues and co-workers work, as it will help them predict the locations of restaurants these *consumers* might frequent. They are interested in team-mates and coaches, as it will help them predict what pastimes and hobbies these consumers might be interested in. And so on.

The data brokerage industry examines and trades in information respecting the wants, needs, desires, interests, and insecurities of Canadian consumers. With this information, companies can target product and service offerings to consumers that the consumer needs—or has been led to believe that they need. This leads to more cost-effective marketing by companies as well as more relevant offers received by consumers.

But the industry is also the driving force behind the growth of databases with detailed profiles about individual consumers, full of information about us that may or may not be accurate, and that could be accessed and used for purposes that we know nothing about and over which we have no control. In light of the increasing amounts of information being assembled about Canadians, questions are being raised about this industry. Where does this information come from? How is it being collected, and who is collecting it? Who are the organizations that are trading it? And to whom are they giving it?

PURPOSE OF STUDY

The purpose of this study is to understand and describe how detailed personal information about Canadians ends up in the hands of direct marketers and others with whom the individual has no relationship. The study examines an industry – the “data brokerage” industry - whose activities have significant implications for individual privacy, yet those activities are poorly-understood by those whose data forms its lifeblood.

BACKGROUND

Computerized databases permit marketers to collect, store, update, match, merge and trade information about individual consumers in ways never before possible. Retailers can now make use of massive amounts of consumer information through technologies that permit extensive “data mining” and the combining of characteristics into a consumer profile which can be called up at the click of a key.¹ Merchants now compete by finding out as

¹ See, for example, Constance Hays, "What Wal-Mart knows about Customers' Habits", (Nov.14, 2004) The New York Times. According to a 2002 study on CRM conducted by the Canadian Marketing Association, 90% of companies collect name, address, purchase history, customer satisfaction information, and data on customer loyalty and retention, while 70% collect demographic information such as household income and age about their customers. 90% reported using technology to support their CRM efforts: cited in *Incorporating Privacy into Marketing and Customer Relationship Management*", a Joint Report by the Information and Privacy Commissioner of Ontario and the Canadian Marketing Association (May 2004), at 7 and 11.

much as possible about their customers and potential customers, and personalizing their marketing approaches based on that knowledge.

Some merchants keep their customer profiles in-house; others share only with their corporate affiliates. However, many companies rent, barter or sell the data they collect about consumers. Personal data has become a valuable commodity that is bought and sold like any other in the marketplace.

In the words of American scholar Daniel Solove,

We are in the midst of an information revolution, and we are only beginning to understand its implications. The past few decades have witnessed a dramatic transformation in the way we shop, bank, and go about our daily business—changes that have resulted in an unprecedented proliferation of records and data. Small details that were once captured in dim memories or fading scraps of paper are now preserved forever in the digital minds of computers, in vast databases with fertile fields of personal data.²

Not surprisingly, an enormous industry has built up around the collection, analysis, and sharing of personal data. According to the Canadian Marketing Association, Canada's marketing community supports over 480,000 jobs and generates more than \$51 billion in overall annual sales through various marketing channels. Much of this economic activity involves the analysis, use and sharing of consumer information.

Solove explains why we should be concerned about unrestrained growth of consumer databases and trading of consumer information:

..... the problem with databases and the practices currently associated with them is that they disempower people. They make people vulnerable by stripping them of control over their personal information. There is no diabolical motive or secret plan for domination; rather, there is a web of thoughtless decisions made by low-level bureaucrats, standardized policies, rigid routines, and a way of relating to individuals and their information that often becomes indifferent to their welfare.³

While Solove's point has general application, most of the reporting and writing on this issue has focused on the extensive (and surprisingly unrestrained) operations of the data brokerage industry in the United States.⁴ Congressional hearings were held into the practices of data brokers following public reports of large-scale identity theft made possible by access to the files of Choicepoint, a giant US data broker.⁵ Privacy advocates have decried the increasingly widespread reliance on often inaccurate personal information obtained from data brokers for employment, insurance, and other purposes, including the US government's use of private data brokers to develop terrorist watch lists.⁶

To this point, it has not been clear to what extent the Canadian data brokerage industry mirrors that in the US, if at all. Indeed, given differences in laws, industry self-regulation,⁷

² Daniel Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2004), at 1.

³ *Ibid.*, at 41.

⁴ For an excellent overview of consumer profiling in the USA, see EPIC's webpage on Privacy and Consumer Profiling, <<http://www.epic.org/privacy/profiling/>>. The extent and implications of consumer profiling in the USA are also well catalogued in three excellent books: Simson Garfinkel, *Database Nation: The Death of Privacy in the 21st Century* (Sebastopol: O'Reilly & Associates, 2000); Daniel Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2004); and Robert O'Harrow, *No Place to Hide* (New York: Free Press, 2005).

⁵ See EPIC's Choicepoint summary, <<http://www.epic.org/privacy/choicepoint/#lawsuit>>.

⁶ Christopher Hoofnagle, "Big Brother's Little Helpers: How Choicepoint and Other Commercial Data Brokers Collect and Package your Data for Law Enforcement" (Summer 2004) 29 N.C.J. Int'l L. & Comm. Reg. 595.

⁷ Compare codes of ethics and standards of practice promoted by the Canadian Marketing Association, (<<http://www.the-cma.org/>>) with those of the US Direct Marketing Association (<<http://www.the-dma.org/guidelines/>>).

and consumer attitudes,⁸ the trade in personal information in Canada should be more restrained than that in the USA. Unlike America's patchwork of privacy laws directed at specific sectors, Canada has comprehensive data protection legislation applicable to the private sector generally. Under Canadian law, any commercial organization collecting, using or disclosing personal information must obtain the individual's knowledge and consent to such activities (other than in specified circumstances). The same requirements do not apply to all commercial organizations in the USA; in fact, many American companies that specialize in the collection and disclosure of personal information are largely unregulated.

SCOPE OF STUDY

This study focuses on the Canadian data brokerage industry, by which we mean companies whose primary business involves the trading and analysis of personal information about Canadians. Though many companies collect, analyze, and make available to others information about their customers, these activities are usually secondary to their retail business. Such companies are referred to in this report as "data owners". Instead, our focus is on companies who gather information from data owners and other sources in order to develop and sell data products to direct marketers and other end-users. Most of these companies have no retail presence and are not well known outside the marketing industry. Yet, they deal with our personal information on a day-to-day basis, and play a significant role in the increasing ability of marketers (and others) to profile individuals for marketing or other purposes.

This study does not examine:

- the trade in business/professional information;
- the data brokerage industry outside Canada; or
- the collection and use of consumer data online via spyware and related technologies.

Nor does the study deal in any depth with:

- the business of private investigations, individual "background checks" and other individualized search services;
- in-house consumer profiling by data owners; or
- the uses, other than direct marketing/fundraising, to which information obtained from data brokers is put.

Finally, although the study does describe how Canadian data brokers comply with Canadian privacy laws generally, it does not assess data broker compliance with Canadian privacy laws. It is descriptive rather than analytical or critical.⁹

METHODOLOGY

Research for this study was conducted using a variety of methods, including a review of the literature on direct marketing and consumer profiling, a review of direct marketing industry websites and publications, Internet searches, access to information requests, a search of the Contracts Canada *Contract History* database,¹⁰ consultations with experts both inside and outside the industry (see Appendix), and selective follow-up with list managers and data compilers.

⁸ According to a survey conducted by EDS and Ipsos-Reid in 2005, "Fifteen per cent of Canadians would allow an organization to use personal information to market products and services back to them, while 55 per cent of Americans would allow such marketing.": EDS Canada Privacy and Identity Management Survey: Press Release, <<http://www.ipsos-na.com/news/pressrelease.cfm?id=2543>>.

⁹ See CIPPIC, *Compliance with Canadian Data Protection Laws: Are Retailers Measuring Up?* (April 2006), for an assessment of online retailer policies and practices under federal privacy law.

¹⁰ <http://csi.contractsCanada.gc.ca/csi/prod/en/applctrl.cfm?cmd=start>

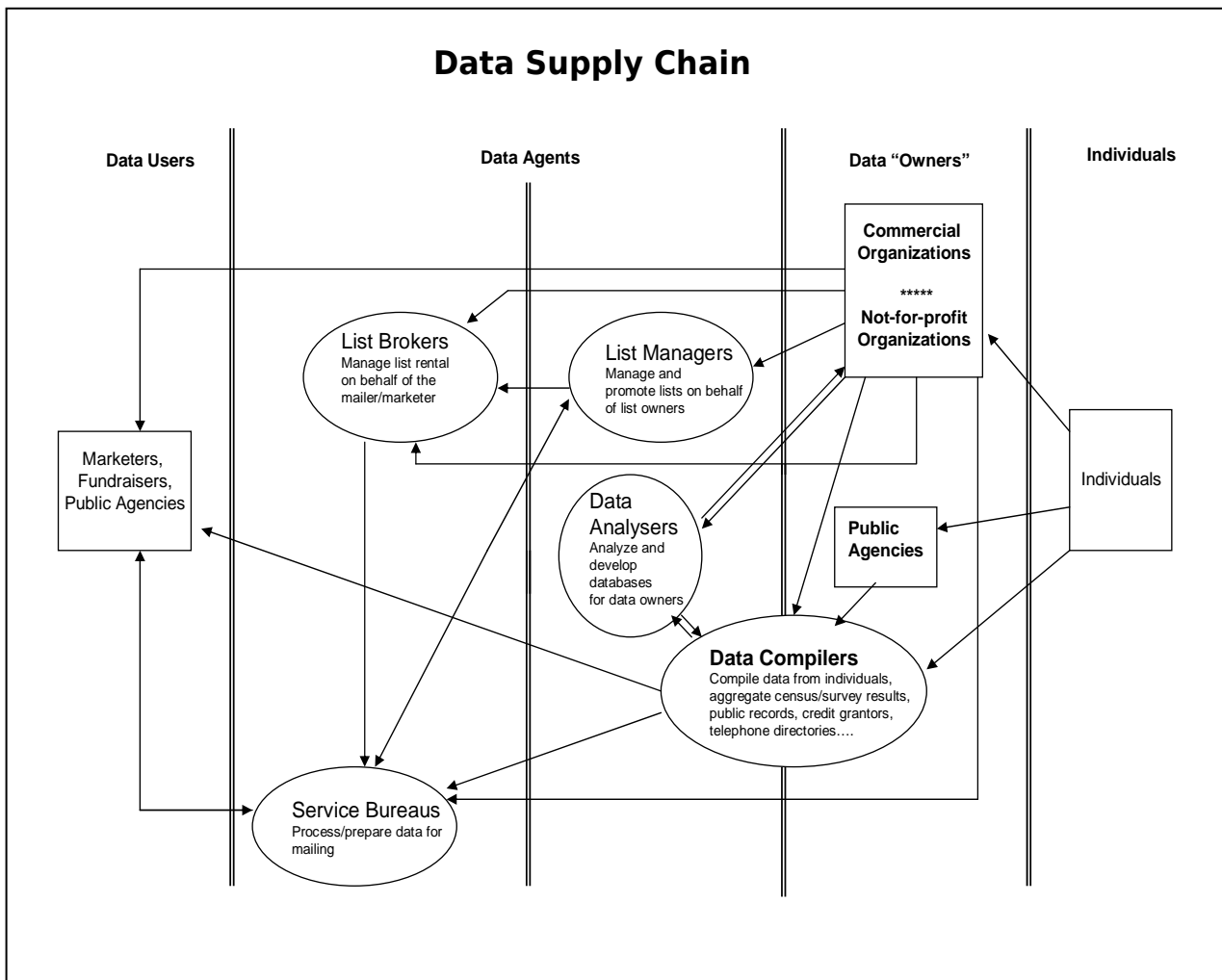
Through these efforts, we first sought to understand the different types of entities and functions involved in consumer profiling, then attempted to identify the key players in the Canadian market and their roles. We followed up directly with numerous companies. Representatives of the Canadian Marketing Association were invaluable in helping us understand the complexities of their industry - confirming, correcting and clarifying the impressions we gathered from our arm's length research.

We then sought to identify the sources from which data owners collect Canadian consumer information and to understand how that information ends up in the hands of data brokers and marketers. Having identified publications and portals through which Canadian data products and services are advertised, we collected hundreds of data cards advertising Canadian data for rent or sale, and followed up with list managers and data compilers for clarification as necessary. And we approached the issue from the other side, by asking data owners to whom they disclose their customer data.

Additionally, we researched Statistics Canada's practice of selling aggregate, non-personal data products, and Canada Post's practice of selling personal "change of address" information.

We also attempted to ascertain whether and how the federal government uses consumer data produced by the industry, by searching the government contracts database and following up with the relevant departments.

Finally, we reviewed industry guidelines and privacy policies in order to understand how companies trading in personal information approach compliance with privacy laws.



AN OVERVIEW OF THE INDUSTRY: KEY PLAYERS AND DATA FLOWS¹¹

The above diagram is a highly simplified representation of the data brokerage industry. At the far left-hand side are the entities that purchase data about consumers (**"data users"**). For the most part, these are companies seeking to target the marketing of their products or services to likely purchasers.

At the far right are **individuals**, who give up their personal data in various capacities: as purchasers, subscribers, registrants, members, cardholders, donors, contest entrants, survey respondents, and even mere inquirers or browsers on the internet.

Second from the right are organizations (**"data owners"**¹²) that rent, barter, or sell data about their customers, clients, members, donors, respondents or others. Data owners usually collect this information in their capacity as retailers, service providers or governments, and in most cases, they do so directly from the individual.

In some cases, information is traded directly between data owners and data users. Such direct trading occurs most commonly among corporate affiliates, as well as non-profit organizations who frequently exchange lists with each other in order to reach out to new potential donors.

In most cases, however, intermediaries facilitate the trade by acting as agents for data owners and/or data users (**"list managers"/ "list brokers"**), by analyzing and

¹¹ Industry practices relating to consumer consent are discussed later, under the heading "Methods of Industry Compliance with Privacy Laws".

¹² Our use of the term "data owners" does not imply ownership in the legal sense of the term. Rather, it is meant to distinguish these companies from data compilers or others in the data supply chain.

developing databases for data owners (**“data analysers”**), by combining and enhancing raw data gathered from a variety of data owners (**“data compilers”**), and by processing and preparing data for mailings (**“service bureaus”**). Though some companies specialize in one or two of these functions, others offer “one-stop shopping” services to data owners seeking to leverage their customer data, as well as to marketers seeking consumer lists. The industry is in constant flux as companies expand, merge, outsource functions and bring them in-house again.

Most consumer data sold to data users is provided in the form of a list of names and addresses of individuals who meet certain criteria (e.g., have purchased books on gardening in the past year; own a “gold card” credit card; or have responded to a direct mail offer). Thousands of such lists are available for rent. They may include telephone numbers and email addresses in addition to or instead of postal addresses.

Typically, each list will include a number of “selects”, such as location, gender, age, and recency of transaction. Other selects that may be offered include (but are not limited to) ethnicity, presence of children in the residence and age thereof, income, home value, credit cards, credit status, buying patterns, and hobbies. Selects vary by list, and the purchaser pays according to the selects chosen. Individual-specific information is not transferred to the mailer; instead, individuals are grouped according to their demographic characteristics (e.g., by age group, income group, home value, etc.), and a code is attached to each group. This allows the marketer to direct relevant offers to groups of consumers depending on their likely receptiveness.

In most cases, lists are rented to marketers for one-time use only. The rental price varies by select and method of delivery (e.g., diskette, CD-ROM, e-mail, labels). In many cases, the data user never actually receives or sees the list; instead, it may be sent directly to a service bureau that prepares and sends the mailing on behalf of the data user. This is the case, for example, with some opt-in e-mail or other lists over which the list owner wishes to maintain strict control. In most cases, however, the list data is delivered to the data user, who is contractually bound to limited use and disposal of it. Data owners commonly include decoy names in outgoing list orders in order to detect misuse of their lists.

In addition to the common “one-time use” limitation, list owners may apply other restrictions such as “no telemarketing”, “no adult services”, or, most commonly, “sample mail piece required”. The sample mail piece requirement gives the data owner control over distribution of its list. In some cases, the list owner will only share its list with certain retailers.

Most consumer lists are rented for a fee, with list brokers and agents taking a commission. However, direct exchanges between data owners and data users often take the form of barter, with the two entities exchanging lists. In addition, there is at least one “data cooperative” service operating in Canada, through which members have access to consumer information supplied by other members.

While the list rental business continues to thrive, a new industry based on data analytics and consumer profiling has emerged. Few companies now merely broker or rent lists; most also offer some form of data processing, enhancement, mining, analysis or other services on behalf of either marketers or data owners. For example, one list broker advertises that it

will help you understand your current customers and use that information to target new prospects. After compiling your in-house data from all sources, we overlay this database with our files to build a detailed customer profile...[which] will include such details as geographic location, demographic makeup, product preferences, and leisure activities. Next we apply this profile to prospect lists, using highly advanced analytics and modeling tools to generate a large and targeted database of current and potential customers, yielding better response rates and higher ROI.¹³

¹³ Canada Direct, < <http://www.canadadirect.ca>>.

Most such individual customer profiling appears to be kept in-house, or at least within the corporate family. Other than the special cases of credit bureaus, data cooperatives, and individual search services, Canadian data brokers trade largely in lists of consumer names and addresses, grouped according to demographic, consumption or other criteria.

DATA USERS

Data users generate the demand that drives the industry. Most data users are retailers or service providers seeking to market their goods and services. Non-profit organizations seeking to raise funds are also frequent users.

Government agencies also purchase data and related services from the private sector for a variety of purposes. Elections Canada, for example, is using the services of Cornerstone Group of Companies Ltd. ("Cornerstone"), one of Canada's largest data brokers, to maintain its electoral lists.

In the USA, state security agencies have used private sector data brokers to profile individuals and compile terrorist watch lists.¹⁴ It is not clear to what extent, if any, the Canadian government or law enforcement agencies are doing likewise. However, we did learn, pursuant to an access to information request filed in early 2006, the RCMP disclosed that it has purchased data from Canadian data brokers for law enforcement purposes, and that such information included telephone and address information, as well as public record personal information.¹⁵ Further research is needed to determine how Canadian governments are using data purchased from private sector data brokers.

LIST BROKERS

Direct marketers and fundraisers often turn to list brokers to help them find the most relevant and useful list for their purpose. List brokers act on behalf of data users, recommending and acquiring lists for them. Brokers research the market to find lists that meet the targeting criteria of the client marketer. They negotiate pricing and special deals, coordinate sample mail pieces, place orders with list managers, and ensure on-time delivery of orders. They also often assist marketers with list response analysis and may offer consulting and strategizing services to assist their clients in designing effective marketing strategies. According to industry representatives, list brokers rarely if ever handle mailing lists; list managers or data owners usually provide the lists directly to the service bureau for processing. Most brokers also act as list managers on behalf of data owners, which provide them with increased knowledge of and access to lists. Examples of Canadian list brokers include Cornerstone List Brokerage Services, Canada Direct Database Marketing Inc., Global Addresses Inc., Prospects Influential Inc., and West List Co.

DATA OWNERS

By "data owners", we mean entities that collect personal information directly from individuals. There are three main types of data owners: governments, non-profit organizations, and commercial organizations. Each contributes to the data supply chain in different ways.

Governments do not release individual consumer information into the marketplace, but some government agencies provide key data on which the industry relies. Indeed, Statistics Canada's census data and family expenditure survey data constitute the major source of aggregated, non-personal geo-demographic data purchased by data brokers for marketing purposes. Customer lists are filtered through this data to create more customized marketing lists. Canada Post operates the National Change of Address (NCOA) service,

¹⁴ Hoofnagle, *op cit* FN 7.

¹⁵ CIPPIC is following up on this response in an attempt to get more details.

which offers marketers the ability to keep their mailing lists up-to-date: approximately 1.2 million Canadians file change of address notices each year when they move. This information is captured electronically and made available to licensees of Canada Post's NCOA data. Licensees are not permitted to use the NCOA data to create movers' lists or for any purposes other than correcting mailing lists and maintaining software applications.

Non-profit organizations also share member/donor lists with each other, and sometimes make their donor lists available for rent via list managers.

Commercial organizations (retailers and service providers) are the primary source of consumer data that is ultimately made available to marketers and other end-users. While many companies do not share customer information outside their corporate family, many other companies do. We will discuss the ways in which consumer data makes its way from the consumer to marketers and other end-users later in this report.

LIST MANAGERS

List managers act as agents for data owners, promoting and managing their proprietary lists. They advertise lists in multiple industry venues, using a standard format known as a "datacard" to set out the list name, content, source, price, available selects, update frequency, recommended usage, and other key information needed by potential purchasers. In addition, list managers receive orders and coordinate sample mail pieces (or telemarketing scripts) for list owner approval. List managers may also offer data analytics and related services to their clients, enhancing and expanding their clients' databases of consumer information as well as their lists offered for rent. Most list managers also typically act as list brokers.

Many list managers actually hold the data and fulfill orders on behalf of the list owner. However, this is not always the case; although managed externally, many lists reside with and are fulfilled by the list owner.

Examples of Canadian list managers/brokers include Cornerstone List Management Ltd., Prospects Influential Inc., Global Addresses Inc., Barron and Associates, and CanadaDirect Database Marketing Inc. Many US-based list managers also offer Canadian consumer lists, either as separate lists or as selects in a larger North American list. Examples of American list managers active in the Canadian market include Action Direct, Dunhill International, Mokrynskidirect, and West List Co.

At least one company in Canada specializes in email list brokerage: 24/7 Canada Inc., a subsidiary of USA-based 24/7 Media, offers a variety of English and French email lists. Email addresses and additional consumer information (e.g., age, interests, region) on these lists are collected mainly from subscribers to email newsletters.

DATA COOPERATIVES

There is at least one Canadian "data cooperative" service though which members have access to pooled consumer data. Abacus Canada was launched in May 2005 by US-based online marketing giant Doubleclick Inc. It is an extension of US-based Abacus Alliance which boasted over 2,400 members across eight countries in May 2005.¹⁶ The Abacus Canada Alliance describes its service as follows:

A data cooperative, [Abacus Canada's] database is created by bringing together customer transactional information from participating members to create unparalleled insight into consumer shopping behavior. This approach allows

¹⁶ According to the Abacus Alliance website, "The Abacus B2C Alliance database in the US is comprised of 1,550 catalogue, specialty retail, and online companies. The database contains over 4 billion transactions from more than 90 million households and is the largest proprietary database of consumer product purchase data." See < http://www.abacusalliance.com/uk/about_abacus/>.

consumer activity to be viewed not from the narrow perspective of purchases made with one company, but those made across the entire spectrum of the database.

This real purchasing information from active consumers suddenly allows you to leverage information across a range of critical areas including:

- What categories of products they purchase
- When they make their purchases
- How much they spend
- How often they purchase
- How many catalogs they purchase from¹⁷

SERVICE BUREAUS

A significant number of companies offer lettershop and mail preparation services for direct mailers. Such companies usually also offer data processing services, including eliminating duplicate records, verifying, updating and correcting addresses, running against the CMA “do not contact” list; “genderizing” names, ensuring correct use of accents in francophone names, and converting file formats. They also typically offer design and layout assistance, as well as labeling and other services to execute the mailing or email campaign. Examples of Canadian service bureaus include Transcontinental Direct, SMR/Tytrek, Canada Direct, The Helicopter Group, and Pegasus Direct Mail Worx. Some of these companies (e.g., Transcontinental) also offer data analytics services.

DATA COMPILERS

Some companies specialize in gathering consumer data from various sources and compiling their own databases and lists. Most data compilers act as their own list managers. According to our research, data compilers fall into four rough categories: geo-demographic data providers, survey-based data compilers, multiple source data compilers, and credit bureaus.

GEO-DEMOGRAPHIC DATA PROVIDERS

Geo-demographic data identifies geographically-based groups of individuals, also known as “clusters”, and attributes to these clusters demographic characteristics based on Statistics Canada census and other aggregated, non-personal data. A basic premise of geo-demographic segmentation is that people tend to gravitate towards communities with other people of similar backgrounds, interests, and means.¹⁸ Thus, a consumer’s income level, home ownership, and other characteristics are imputed based on their location of residence. Geo-demographic data is typically derived by extracting and analyzing aggregated data obtained from Statistics Canada’s census database according to variables such as population and dwellings, age and sex, family and households, language and mobility, citizenship and immigration, labour force and occupations, education and socio-economic trends. Demographic variables are analyzed using complex predictive mathematical models, advanced spatial trend analysis and macroeconomic models.

Census information is often enhanced with other publicly available information as well as proprietary database information, such as the Print Measurement Bureau’s and BBM Canada’s survey-based data on consumer media behaviour, product preferences and lifestyles (see below). Geo-demographic data products do not identify individuals, but rather profile geographic areas such as postal codes or census dissemination areas.

¹⁷ Abacus Alliance, <http://www.abacusalliance.com/ca/what_is_the_abacus_canada_alliance/default.asp>.

¹⁸ Applied Geographic Solutions, <<http://www.appliedgeographic.com/mosaic.html>>.

In Canada, geo-demographic systems have been available since the 1980s. Leading providers of geo-demographic data in Canada are Environics Analytics Group Inc. (part of the Environics group of companies), Generation 5 Mathematical Technologies Inc., Manifold Data Mining Inc., and MapInfo Canada Inc.

Environics' flagship Canadian product is a consumer segmentation system called PRIZM CE, developed with Claritas in the U.S. The system classifies all Canadians into one of 66 lifestyle types (with names such as "Cosmopolitan Elite", "Electric Avenues", "Jeunes et Actifs", and "Lunch at Tim's") and 11 ethnic groupings. PRIZM CE links geo-demographic information with psychographics, incorporating social value data with demographics and product preferences to explain consumer behaviour. Environics Analytics Group's data sources include Statistics Canada census data, survey data from the Print Measurement Bureau (PMB) and Bureau of Broadcast Measurement (BBM), and social values data from its sister company, Environics Research.

Generation 5 uses a similar program called MOSAIC, a two-tier hierarchical clustering system that classifies postal codes into one of 20 groups and 150 types (sub-groups). In addition to the standard system, MOSAIC is customized for the financial, insurance, and retail industries. MOSAIC is created from four main sources of aggregated consumer data: Statistics Canada's census and family expenditure survey data, BBM Canada survey data, and credit information from TransUnion.

Manifold specializes in creating demographic, household expenditure, consumer purchasing behaviour and lifestyle cluster databases at the 6-digit postal code level for target marketing. Manifold uses its own lifestyle clustering system called "CanaCode", which divides Canadians into 17 clusters depending on household spending and consumer behaviour, and 109 niches for more precise targeting. Manifold's system is based on data from Statistics Canada, Customs and Immigration Canada, Health Canada (birth and mortality rates), Canada Post, survey data from BBM Canada and Adhome/Valassis, as well as Manifold Data Mining's proprietary databases.

MapInfo Canada, a subsidiary of global geo-demographic information provider MapInfo, specializes in "location intelligence". MapInfo Canada uses a proprietary neighbourhood segmentation system called "PSYTE Canada Advantage" that, like PRIZM CE, classifies Canadian neighbourhoods into 66 mutually exclusive lifestyle clusters with names such as "Young Technocrats", "Bicycles and Bookbags", "Elder Harbour", and "Quebec Rural Blues". PSYTE integrates over 250 demographic and consumer behavioural variables from a variety of sources to create these clusters, which are organized into 15 major groups.

While initially anonymous, geo-demographic data is commonly used by other data brokers in conjunction with consumer names and addresses to create or enhance consumer lists by demographic criterion. For example, Environics clients can select PRIZM CE-coded names from InfoCanada's list of 12 million Canadian households (derived from the telephone directory) for direct marketing purposes. InfoCanada itself matches individual consumer names and contact information with aggregated census data from Statistics Canada in order to compile consumer lists (see below). Manifold advertises that its CanaCode data is "easily attachable to a customer database".¹⁹

SURVEY-BASED DATA COMPILERS

A number of companies specialize in the collection of Canadian consumer data via their own proprietary surveys. Consumers usually receive the surveys by mail and are offered coupons, contest entries, or other benefits in exchange for completing them.²⁰

ICOM Information and Communications Inc. bills itself as North America's largest consumer responder database, containing self-reported data on more than 15 million U.S. and 2

¹⁹ Manifold Data Mining Inc., < <http://www.manifolddatamining.com> >.

²⁰ Many data owners also use surveys to gather information about their customers. We are focusing here on companies whose primary business is in the collection of consumer data via surveys.

million Canadian households. ICOM's data is derived from unique consumer surveys that are used to create a database of detailed information on household behavioral data, category and brand usage, hobbies and interests, health ailments, demographics and lifestyles, product purchase behaviors and life stages, inventoried hotline lists and other customized lists. ICOM also obtains consumer information through the management of consumer research, execution and analysis, and through alternative acquisition channels. ICOM is a Canadian company based in Toronto, but was recently bought by Texas-based Alliance Data.

Bluelist.ca is another survey-based data compiler that offers Canadian consumer lists derived from "over 1 million consumer surveys returned each year".²¹ Like ICOM, Bluelist.ca encourages consumers to volunteer detailed information on their purchase behaviour, intentions, hobbies, lifestyles, interests, product ownership and demographics.

The Print Measurement Bureau ("PMB") and Bureau of Broadcast Measurement ("BBM Canada") are private companies that collect information by way of household surveys about consumer behaviour for use by broadcast advertisers and other media-related services. They collect highly detailed data about individual consumer behaviour and usage of specific products and brands, as well as media readership, viewing, and listening habits. PMB states that it "uses an annual sample of 24,000 to measure the readership of over 120 publications and consumer usage of over 2,500 products and brands".²² Its 2005 Product Questionnaire is 91 pages long, and includes questions on matters ranging from banking to toothpaste. BBM Canada's survey covers a similarly wide array of topics, and BBM promotes its sample as "the largest by far of any Canadian media study with a total in-tab sample of over 50,000".²³ Both companies provide psychographic and demographic cluster data as well as product usage data for specific industry sectors. However, such information is made available only in aggregate form; individual consumer names and addresses are not provided.

MULTIPLE SOURCE DATA COMPILERS

While geo-demographic and survey-based data compilers (such as ICOM) may gather data from more than one source in order to produce individual consumer lists, this category includes companies whose business is based on matching data from different sources in order to produce individualized consumer lists. Examples of multiple source data compilers active in Canada include InfoCanada, Cornerstone, and Acxiom Canada.

InfoCanada, a subsidiary of InfoUSA, combines aggregated, non-identifying census data from Statistics Canada with telephone white pages data and other unnamed public sources to compile its database of 12 million Canadian consumers. From this database, it generates consumer lists and offers list enhancement and data profiling services. InfoCanada states that its "consumer database offers a number of demographic and psychographic selections not available together from any other company in the industry".²⁴

Cornerstone Group of Companies Ltd., a full-service Canadian data broker, offers data products based on a variety of sources including telephone directories, geo-demographic data, direct response data, and scanned listings from third party lists that it manages in-house.

Acxiom Corporation, a large American data compiler, offers access to 14 million Canadian listings via its multi-sourced "InfoBase" data product. Acxiom recently opened an office in Canada.

²¹ Bluelist.ca, < <http://www.bluelist.ca> >.

²² Print Measurement Bureau, < <http://www.pmb.ca> >.

²³ Bureau of Broadcast Measurement, < <http://www.bbm.ca> >.

²⁴ InfoCanada, < http://www.infocanada.ca/service/ca/consumer_lists.aspx?bas_page=consumer_lists&bas_service=ca&bas_vendor=99911 >.

CREDIT BUREAUS

Credit bureaus are a special breed of data compiler, more regulated than other data brokers. Their primary business is in compiling and providing individual credit reports, but they also sell geographically aggregated, non-personalized credit information. While subject to general data protection laws in Canada, they are also regulated under provincial consumer reporting legislation. Under these provincial laws, credit bureaus are permitted to gather, store and sell access to individual credit information, subject to specified limits.

“Credit information” is defined broadly in the *Ontario Consumer Reporting Act* as “information about a consumer as to name, age, occupation, place of residence, previous places of residence, marital status, spouse’s name and age, number of dependants, particulars of education or professional qualifications, places of employment, previous places of employment, estimated income, paying habits, outstanding debt obligations, cost of living obligations and assets”.²⁵ Credit bureau files typically also include a list of all individuals and organizations that have requested a copy of an individual’s credit file and to whom information has been disclosed, information about secured loans, bankruptcies and judgments, records of involvement with collection agencies trying to collect debt, and information on debt repayment. Credit bureaus collect this information from credit grantors, debt collectors, and public records. In addition, credit bureaus calculate individual credit scores (based on credit history) and deliver them to credit grantors upon request.

There are three main credit bureaus operating in Canada: Equifax Canada, TransUnion Canada, and Northern Credit Bureaus Inc. Together, these companies hold detailed credit information on all Canadians who have requested or obtained credit.

Credit bureaus are permitted to disclose individual credit information only in specified circumstances or to specified persons. In Ontario, such persons include those who, the bureau has reason to believe, intend to use the information in connection with extending credit, collecting a debt, entering or renewing a tenancy agreement, evaluating fitness for employment, underwriting insurance, or engaging in another business transaction for which the credit report is needed.²⁶ However, credit bureau clients do sometimes use credit reports for marketing purposes. Indeed, credit bureaus offer a number of products and services designed in part to assist clients with their marketing efforts. For example, Equifax offers a service called “CONTACT Plus”, that “brings together data from both Equifax and Cornerstone, manager of the Info-direct™ database. This integrated solution verifies and updates your account information automatically.”²⁷ The stated benefits of this service include the ability to “Reach the right people, right away”; “Reduce returned mail”; “Easily verify and update existing client contact information”; and “Automatically upload...into your predictive programs”.²⁸

Unlike most other data brokers in Canada, credit bureaus provide their clients (credit grantors, debt collectors, employers, landlords, insurers, etc.) with instant electronic access to their database of credit information so as to facilitate the timely exchange of information. In order to discourage illegal use, they carefully pre-screen customers prior to granting them access. According to Equifax, a large percentage of applications for membership are turned down as a result of this pre-screening process.²⁹

In addition to individual credit reports created and provided in accordance with the provincial regulatory regime, Equifax Canada and TransUnion Canada sell aggregated, non-personalized data to businesses for marketing purposes. In the case of Equifax Canada, this aggregated data contains credit information for groups of no fewer than 15 individuals. TransUnion Canada’s aggregated data products are generally reduced to the postal code

²⁵ *Ontario Consumer Reporting Act*, R.S.O. 1990, c.33, s.1.

²⁶ *Ibid.*, subs.8(1)(d).

²⁷ <http://www.equifax.com/EFX_Canada/services_and_solutions/data_solutions/contplussol_e.html>

²⁸ *Ibid.*

²⁹ Telephone interview with Equifax legal counsel.

level (usually one city block). Neither Equifax Canada nor TransUnion Canada sell lists of individual consumer names and addresses.

For example, Equifax advertises its “Equifax Credit Behaviour Segmentation” service as follows:

“Looking for in-depth information about your customers and prospects?”

Gaining a marketing advantage in today’s competitive environment demands sophisticated targeting and segmentation tools. Only by knowing as much as possible about your customers and prospects can you successfully launch new products, special promotions and up-selling strategies. Equifax Credit Behaviour Segmentation helps you meet this challenge with its pool of purely Canadian credit data aggregated to the postal code level, suitable for multiple industry applications.”³⁰

TransUnion advertises the following service to businesses under the heading “Marketing Tools”:

“AccountNet® Simplify your analysis and sharpen your marketing. AccountNet is uniquely designed to help boost your overall profits without the cost and complexity normally associated with building custom models. By using summarized consumer credit data, AccountNet facilitates your development of scoring models, account monitoring strategies, and cross-selling resources.”³¹

DATA ANALYSERS

A number of companies specialize in helping data owners leverage their data through data mining, data analytics, and related database management activities. Although they do not move consumer information along the supply chain, data analysers do play a key role in the industry: helping data owners create rich databases of customer profiles for use in their own targeted marketing campaigns, and that are sometimes used as the basis for marketing lists shared with third parties.

Some companies provide these kind of services exclusively (e.g., Boire Filler Group), while others do so as an adjunct to their list management/brokerage, data compilation, mailing or other services (e.g., Cornerstone, Resolve Corporation, Helicopter Group). As data analysers, these companies merely work with their clients’ databases; they do not disclose data to third parties.

The Boire Filler Group, for example, “uses advanced and powerful data mining techniques to help you understand your existing and potential customers. Their age, gender and income. Where they live. What they buy. How they buy. And why.”³² In addition to customer data analysis and profiling, the Boire Filler Group uses statistical analysis and predictive models to “help you anticipate how your customers will behave in the future by looking at what they’ve done in the past.”

Resolve Corporation “offers comprehensive data capture solutions that enable our clients to optimize the information obtained through their promotional marketing efforts”.³³

Cornerstone boasts that it “excels at data enhancement, thanks to proprietary innovations, complete data hygiene techniques and exclusive licenses to robust mailing lists”.³⁴

CanadaDirect uses data analytics, predictive modeling, and customer segmentation techniques to provide its clients with “a wealth of knowledge about [their] customers”.³⁵

³⁰ <http://www.equifax.com/EFX_Canada/services_and_solutions/decision_solutions/knecbs_e.html>

³¹ <<http://www.tuc.ca/TUCorp/subscriber/managementproducts.htm>>.

³² Boire Filler, <<http://www.boirefillergroup.com/whatWeDo.phtml>>.

³³ Resolve Corporation, <http://www.resolvecorporation.com/our_solutions/data_capture.html>.

³⁴ Cornerstone Group of Companies Ltd., <<http://www.cstonecanada.com/solutions/pds/de>>.

³⁵ Canada Direct, <<http://www.canadadirect.ca>>.

Transcontinental offers “detailed statistical analysis, predictive modeling, behavioural segmentation and customer profiling” in addition to its mailing services.³⁶

And USA giant Acxiom offers “marketing database solutions [that] help you acquire, retain and maximize customer relationships by giving you the knowledge you need to make timely business decisions critical to prospecting and retention strategy development, appropriate treatment, and increasing customer satisfaction, loyalty and lifetime value.”³⁷

INDIVIDUAL SEARCH SERVICES

This study focuses on the trade in bulk consumer information. A separate, but related, phenomenon is that of individual search services: data brokers who will, for a fee, provide background checks, criminal records searches, unlisted telephone numbers, cell phone records, psychological profiles, and other information about individuals. Many advertise online, and some provide no contact information for themselves – customers are limited to making orders via webforms on the site.

The vast majority of these kind of data brokers are based in the United States, and are able to offer substantially more information (largely from public records) about Americans than about Canadians. However, there is still a thriving industry based on demand for information about individual Canadians. For example, US-based National Locator Service³⁸ offers a wide range of public records searches in Canada, including criminal records, bankruptcies, tax liens, court judgments, unsealed divorce records, property searches, and property liens.

Many US-based online services offer telephone records searches for Canadians as well as Americans.³⁹ Other individual searches of Canadians that can be commissioned online include unlisted telephone numbers⁴⁰, psychological profiles⁴¹, and bank account information (bank names, account numbers, and balances).⁴²

The source of this non-publicly available data is unclear, and the companies offering such search services are evasive when asked about it. Information such as telephone and banking records, the accuracy of which can be verified, is often obtained by private investigators posing as individuals with a right to access the data. Because there is no guarantee of success in such ventures, individual search services often offer services on a “no hit, no fee” basis. “Psychological profiles”, the accuracy of which is difficult to verify, are accompanied by broad disclaimers, suggesting that they may be largely if not wholly fictional in nature.⁴³

“Individual search” data brokers do not usually maintain their own databases of consumer information; rather, they access other databases (public and private) and employ private investigators in order to respond to requests for information about specific individuals. However, some do store the information they gather and thus build up a database of historical information on individuals. For example, “Net Detective”⁴⁴ proudly represented on its website in late March 2006 that it had collected records on 217,766,271 people since it began offering search services in 1996.

³⁶ Transcontinental < <http://www.transcontinental-direct.com> >.

³⁷ Acxiom <<http://www.acxiom.com/default.aspx?ID=1768&DisplayID=18>>.

³⁸ National Locator Service <<http://www.nationallocatorservice.com/>>.

³⁹ See Abika <<http://www.abika.com>>; Secret Info <www.secret-info.com>; and ICU Inc. <www.tracerservices.com>.

⁴⁰ Americanada < <http://www.Americanada.com>>, The Net Detective <<http://www.the-net-detective.com/>>.

⁴¹ Abika < <http://www.abika.com>>.

⁴² ICU Inc. <www.tracerservices.com>.

⁴³ See, for example, <<http://www.abika.com>>.

⁴⁴ Net Detective, <<http://www.net-detective.com/>>.

DATA PRODUCTS AND DATA SOURCES

A CASE STUDY: MAGAZINE AND NEWSPAPER SUBSCRIBER INFORMATION

Armed with some understanding of how the industry works, we can now turn to examine the sort of information available for purchase. To start things off, consider magazine and newspaper subscriptions. A publisher may wish to make available a list of its subscribers for use by other organizations. A number of inferences can—and usually are—made about the names appearing on that list. Though it is almost trite to state, all of the people on the list could be said to have an interest in magazines or newspapers, and are open to subscribing to them. Depending on the type of publication in question, additional inferences can also be made. For example, one might infer that subscribers to *Canadian Geographic* magazine are active, interested in the outdoors, and would likely be receptive to receiving information and offers with respect to travel and outdoor adventure opportunities—at least more so than a subscriber to *TV Guide* might otherwise be.

Similarly, inferences may be made about the interests and needs of people who subscribe to the *Gerber Canada* newsletter (which, in promotional copy related to its customer list, advises that subscriber families have children under the age of 2) and *Highlights for Children* magazine (which is a magazine geared towards children 1-5 years of age). Other inferences may be drawn about subscribers to the *Anglican Journal*—the national newspaper of the Anglican Church of Canada, and to subscribers of periodicals published by Our Sunday Visitor, a Catholic publishing house. Lists of the subscribers to all of these publications are being offered for sale on the internet.

Additionally, subscriber information is often enhanced with other information in the possession of the publisher to allow further inferences to be made resulting in more precise targeting of subscribers by third parties. Going back to *Canadian Geographic* magazine for a second, in obtaining a subscriber list, one can request that the information identify only those persons who live in apartments, who have initiated subscriptions recently, or who have purchased other products made available through the magazine by the publisher. One might infer that apartment dwellers might be interested in different sorts of promotions (modular furniture, low-cost mortgages for first home purchases, etc) than other readers, and similar inferences might be made about other categories of subscribers.

Attributes are also often imputed to individuals based on their name, address, or other information. For example, someone living in an upscale neighborhood will be assumed to have the average income and household value in that neighbourhood. An individual with the last name of “Singh” might be given the imputed characteristic of East Indian ethnicity, even where an indication of ethnicity had not been made by the individual. Demographic and psychographic profiles attributing general characteristics to people, relative to the overall population, are widely utilized to enhance consumer lists (see “Geo-demographic data compilers”, above).⁴⁵ Marketers can thus purchase lists of consumer names, addresses and phone numbers that meet specific criteria. For example, the subscriber list of *British Columbia Magazine* is offered for sale with optional age and income information, allowing list users to better target offers that might appeal to members of a particular age or income bracket.

In some cases, information about subscriber age and income might be obtained from the subscriber directly, through a survey, questionnaire or otherwise. In the case of *British Columbia Magazine*, their age and income information is derived from publicly available statistical information reduced to an accuracy range of approximately 200 households. Accordingly, while the magazine’s publisher may not have been given the subscriber’s specific income data, relying upon this publicly available statistical information, the

⁴⁵ Note that these lists impute characteristics to a group of individuals, rather than to individuals.

subscriber's income will be deemed to be an average of the 200 households that surround his own.

The foregoing inferences and imputed characteristics are called "selects" or selection criteria. Our study located a broad range of selects being offered in association with magazine subscription lists, including urban v. rural dwellers, home v. business address, gender, age, income, recent address changes, direct mail purchasers, charitable donors, and method of subscription payment, amongst others. Requesting particular selects from a list allows the list user to target their prospective customers with greater accuracy.

Thusfar, we have focused upon information relating predominantly to a list of magazine subscribers. However, as noted earlier, nearly every organization that sells products and services to the public "owns" data about its customers, and to varying degrees these organizations use that information to tailor their business operations and their promotions. Most importantly for the purposes of our study, many make this information available for purchase by third parties. Similarly, data compilers overlay both publicly available and proprietary data, and this too is made available for purchase. Accordingly, there is a surprisingly broad amount of information available for purchase about Canadian consumers.

GENERAL TYPES OF INFORMATION AVAILABLE

Such information, derived from multiple sources and available in a variety of data products, includes:

<ul style="list-style-type: none"> • household health information (eg. households where at least one member has experienced ADHD, arthritis, bedwetting, depression, diabetes, heart or kidney disease, high blood pressure or cholesterol, lactose intolerance, macular degeneration, migraines, neck pain, nut allergies, urinary tract and yeast infections) • marital status • credit card holders / users • high net worth individuals with discretionary funds • gender • age • household income—both annual and monthly • race and ethnicity • geography • household occupants (whether the person has children) • telephone number • occupation • level of education • whether the person is likely to respond to "money-making opportunities" 	<ul style="list-style-type: none"> • diet • hobbies (whether and what the person collects) • religion (affiliation and denomination) • length of time spent residing at current residence, and type (eg. house, apartment, condominium, trailer) • type of automobile owned • holders of loans for high-end automobiles • frequent air travellers (including class of ticket purchased) • habits (smoking, drinking) • contributions to political, religious, and charitable groups • shopping preferences • pet ownership and type • interests (including gambling, arts, antiques, astrology, technology) • book, magazine and music preferences • membership in book, video, tape, and compact disk clubs
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<ul style="list-style-type: none"> • homeownership • product ownership 	<ul style="list-style-type: none"> • whether the person responds to direct mail solicitations • online and mail order purchases and type
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Of course, multiple selects may be applied to further narrow the list of prospective targets for a marketing campaign. If a user wanted to contact only wealthy, magazine-loving, apartment-dwelling, credit-card using Canadian parents who have purchased a natural health product online in the last six months, in theory, it would be possible to come up with such a list.

DATA SOURCES

While many businesses do not share customer information outside the corporate family, a wide range of organizations make information about their customers and clients available to third parties. These include newspaper and magazine publishers, email subscription services, online retailers, mail order retailers, travel agencies, charitable organizations, product manufacturers, seminar organizers, and credit card processing companies amongst others. A more detailed discussion of the information available from these sources appears below.

NEWSPAPER & MAGAZINE PUBLISHERS

As discussed, much of the information is derived from lists of customers who have purchased various products and services, both online and in the real world. Magazine subscription lists (discussed above) are widely available, with information on subscribers to Maclean's, Martha Stewart Living, Sports Illustrated, Macworld, FHM, The New Yorker, GQ, Vogue, Gourmet, Tennis Magazine, Golf Digest, Canadian Gardening, Our Canada, Outdoor Canada, Playstation Magazine, The Economist, Today's Parent Magazine, and the Walrus magazines, amongst others, being available for purchase.

BOOK, MUSIC AND MOVIE CLUBS

Additionally, book, music and movie club membership records have traditionally been rich sources for information about individual hobbies and interests. For example, our research located a list titled Doubleday Book of the Month Club Masterfile which purportedly lists the names of several hundred thousand Canadians who have a membership in at least one of 20 different book clubs. Another list, titled Grolier Canadian Bookclub Database Masterfile, purportedly contains the names of over half a million Canadians who subscribe to a children's book list. As a final example, our research also located a list titled Columbia House Music Club Former Members, which purports to contain contact information for individuals who fulfilled music buying contracts with that company within the last three years. Selects offered in association with this list include gender, age, and musical preference (eg. classical, easy listening, country, soft rock, hard rock, and dance/pop), amongst others. Current membership lists are also available for sale.

MAIL ORDER RETAILERS

In a similar vein, mail order companies also have a rich repository of information with respect to consumer interests, habits and purchases. Our research located lists being made available by or on behalf of such well known retailers as Abercrombie & Fitch (clothing), Eddie Bauer (clothing), J. Crew (clothing), Victoria's Secret (intimates), Cabelas (outdoor equipment), Bass Pro Shops (outdoor equipment), Hammacher Schlemmer (household and

personal gifts and gadgets) and JC Whitney (auto parts / accessories) amongst others.⁴⁶ Lists are also available respecting the purchase of more specialized products: for example, a list titled "Breck's Canada" purports to list Canadians who have purchased gardening supplies and bulbs; a list titled "D.M.C. Canadian Slimming Buyers" purports to list Canadians who have purchased weight loss products; and a list titled "Paula Young Fashion Wigs Canada" purports to list Canadian women who have purchased wigs and hairpieces.

SERVICE PROVIDERS

It is not only retailers who are making personal information available for purchase—service providers, too, are making information about their clients available. Our research located a list titled "Canadians With Discretionary Funds" which purportedly lists the names of Canadians with disposable income who respond to direct mail solicitations. Interestingly, the information has apparently been sourced from the records "of an investment group."

Similarly, we also located a list titled "Frequent Travelers in Canada" which purportedly provides the contact information for individuals that regularly purchase international round-trip business class tickets for business related interests and activities. This list was apparently sourced from the records of "airline ticketing offices and travel agencies."

Further, we located two lists related to timeshares. One, titled "Timeshare Owners Canada" purports to list Canadians who own timeshares throughout the world. These records were obtained from a "timeshare owner database." Another similar timeshare list located purports to be drawn from "public records."

Still on the topic of travel, we note a list located by our research titled "Tropical Beach Resort Goers." The list purports to contain information relating to Canadians who visit beach resorts at least once per year. As the promotional copy related to the list notes, "After a few trips, they become personally known to the owners and staff of the resorts. The resorts maintain complete files of contact address, phones, and Email, and in some cases, notes regarding special treatment expected by each one of these holiday makers."

As a final example, we also located a list entitled "Canada—Gold Card Bearers", which purports to be a list of Canadian individuals who make purchases with their gold credit cards. Interestingly, this list—one of the selects of which includes cardholder monthly income—was apparently sourced from "payment processing companies".

SURVEYS

Surveys are a tremendously valuable source of consumer information. Canadians appear to be remarkably open to disclosing a great deal of sensitive information about themselves to surveyors, even for very little of value in return.⁴⁷ Relying upon survey information, one survey-based data compiler⁴⁸ claims to have the names of:

- 8.7 million Canadians organized by preferred genre of book;
- 8.1 million organized by hobby;
- 5 million organized by the types of home electronics they own and want to purchase;
- 3.6 million organized by sports interest;
- 3.4 million organized by the diet or nutritional information they are following;

⁴⁶ Notably, half of these retailers have opened (or announced the opening of) physical retail locations in Canada.

⁴⁷ According to a survey of 5,257 consumers in the USA and Canada conducted by Forrester Research in 2005, "...while 86% of consumers admitted to discomfort with disclosing information to marketers, they participated in online surveys and research for free products or coupons, and entered competitions or sweepstakes at rates nearly equal to consumers who aren't as concerned, according to Forrester. 71% participate in a loyalty program, which feed purchase information to marketers": "Privacy worries don't keep consumers out of online surveys and promotions" (Jan.30, 2006) Internet Retailer, <<http://www.internetretailer.com/dailyNews.asp?id=17434>>.

⁴⁸ Bluelist.ca

- 3.1 million organized by the type of investments they own and want to purchase;
- 2.8 million organized by the types of causes to which they donate
- 2 million organized by car ownership, and indicating an intention to purchase a car within 1-2 years
- 1.9 million organized by credit or debit card ownership.

Aside from consumer interest information, another survey-based data compiler⁴⁹ claims to have contact information for households where one member thereof was struggling with any one or more of a myriad of health issues, including such serious and sensitive issues as ADHD, allergies, arthritis, bladder problems, depression, diabetes, heart or kidney disease, high blood pressure or cholesterol, and yeast infections. This information was gathered from consumer surveys.

Surveys are used to gather consumer information by data owners and their partners, as well as by survey-based data compilers. Consumers may be asked by a website, service provider, or other retailer to complete a “customer satisfaction” or other survey when they access the site or request information. Consumer responses to such surveys can be a rich source of detailed, personal information about them.

WARRANTY CARDS AND PRODUCT REGISTRATIONS

Information provided by consumers on mail-in warranty cards and online product registration questionnaires is yet another source for determining the personal hobbies and interests of consumers. These cards often request information from the consumer well beyond what is necessary to provide support relating to the purchased product. While in some cases the information may be used by the manufacturer to tailor its product lines and business practices, our research indicates that this information is widely available for purchase by third parties. For example, one of the lists we located (“Lifestyle Selector Canada”) purportedly contains the contact information of over one million Canadians, and the available selects include age, credit card ownership, occupation, income, education, marital status, presence of children in the household and children’s ages. According to the list’s datacard, “this database is primarily derived from product registration cards filled out voluntarily by consumers after they have completed a product purchase.” Another list we found purports to provide information collected from warranty cards respecting home-based purchasers of computer-related products and services from a particular manufacturer (“APC”).

CONTESTS, OFFERS AND LOYALTY CARDS

In-store offers are another source of personal information. Whether money-back coupons that have to be filled in and returned for rebate or in-store sign-up programs that provide special offers, these are also important sources of information respecting consumer interests and preferences. One of the lists we located, titled “Motherhood Maternity Canada” is described as reflecting information collected at point of purchase, and contains information about persons who “joined up for the ‘Motherhood Perks Program’ in order to receive special offers for products and services.”

Similarly, information about members of customer loyalty programs is also available for purchase. For example, one list located by our research, titled “Hotel Privilege Card Holders—The Americas” purports to be a list of frequent hotel visitors who are members on a loyalty card program created by several “well-known hotel chains.”

Contests, both on-line and offline, are another source of personal information. In certain circumstances, contest entry is taken to be an expression of interest in the contest holder’s product or service; similarly, contest entry may also be taken as an expression of interest in

⁴⁹ ICOM Information and Communications Inc.

the product or service being offered as the prize. Contest entrants are also often described as being good targets for wealth-enhancement offers. Our research located several of these lists, including one titled "Global Sweepstakes & Contest Entrants – Canada" and purports to list the names of persons who, via direct mail, "purchased low-end merchandise or paid to enter a series of sweepstakes or contests with the hopes of winning big." Another, titled "Australian Players Service Lottery Buyers – Canada" lists the names of 145,000 Canadian who have purchased tickets for the Australian lottery via the mail. We also discovered a list titled "Inside Entertainment" which purports to list the contact information for contest entrants at the website for the popular magazine, Inside Entertainment.

SEMINARS AND CONFERENCES

Information is also collected and shared about individuals attending seminars and conferences. The topic of the conference is used to make inferences about the individuals' interests. One of the lists located, titled "The Learning Annex Canada" offers a list of individuals who have "paid between \$45-\$200 to attend seminars and workshops on topics such as the Outdoors, Creativity, Personal Growth, Writing, Careers & Money, Singles & Intimacy and Computers."

REQUESTS FOR INFORMATION

Another source of personal information traded in the marketplace is based on individual requests for further information from companies. Information of this sort is particularly valuable, as the individual has self-identified as being interested, and is likely contemplating the acquisition of a particular product or service. For example, the APC list denoted above purports to include contact information for people who have merely made inquiries about APC products.

WEBSITES

Increasingly, consumers are being required to divulge personal information as part of their on-line experience. Somewhat cryptically, "the internet" is a frequently-cited source of consumer information on datacards we reviewed, showing up as a source for a wide variety of lists, including individuals registering at educational websites, requesting trial subscriptions to an investment newsletter, requesting free samples, purchasing health-related products, requesting information on money-making opportunities and debt-counseling, filling out online questionnaires, and signing up to receive hobby-related information and consumer alerts by email.

One Canadian data broker specializes in email lists. 24/7 Canada operates a number of email lists, many of which contain information about users of the popular CANOE (Canadian Online Explorer) website. For a fee, it will send the marketer's message via email to any one of several selects of CANOE users, including those interested in travel, home & garden, entertainment, sports or automobiles. 24/7 does not share its lists with marketers.

Another information-gathering tactic involves the provision of free information or services online. Similar to the offline world, online organizations obtain personal information directly from consumers by attracting them with special offers, contests, and related programs. This information is then consolidated and made available for purchase. One list we located, titled "Direct Response TV Commercials", purports to contain the personal information of Canadian consumers who visited a website in response to a TV ad relating to starting a business.

In exchange for "free access" to the website generally or to specified content supplied thereon, website proprietors often demand that users register by supplying their personal information, including an email address to which is mailed a username or access code. As was the case with magazine subscriptions, both the types of websites for which one

registers and the offers to which one responds are thought to reflect the interests of the user.

Further, it appears that online commercial transactions are being tracked in a similar manner to their offline counterparts. One list we located, called "Online Auctions—Canadian" purports to list online consumers who have purchased various types of products. Interestingly, the promotional copy for the list indicates that the list information has been enhanced with "electronic credit card transaction information to identify high, medium or low credit card activity." We were told that the source of this list is "a customer satisfaction survey from the transaction processing company".

Increasingly, "click-stream" data is also being collected. This refers to data that is collected about the user as they browse around a website. This includes the types of advertisements the user clicks on, the types of activities the user engages in while on the site, and the amount of time the user spends at a particular part of the site. For example, our research located a list titled "Sterling Media Canadians" purports to contain the name of over 400,000 Canadians consumers obtained through "online transactional data: consumers have either clicked-thru, or engaged in online transactions". Generally, click-stream data is not personally identifiable; however, if the user has previously provided their personal information to site, than this data can be combined with that identifiable information to provide further insights about the individual.

Non-Profit and Charitable Organizations

Information with respect to an individual's donations to charitable and non-profit organizations can also convey a great deal of information about individual interests. It is possible to purchase lists of donors to Canadian Jewish causes, the Canadian Liver Foundation, Save the Children Canada, Canadian children's causes generally, the Trans Canada Trail, and others. General lists are also available setting out the names and contact information of individuals generally organized by the type of cause to which they typically make donations.

Again, this donor information can be combined with other selects to create a highly specialized list of potential contacts. Our research located a variety of ready-made lists available for purchase, including one titled "Canadian Chinese Donors", that purports to list Canadian Chinese persons who have made a charitable contribution within the last 36 months; another, titled "Canadian Leisure Activities Fundraising Donors", purports to list active subscribers to one of a variety of hobby-related magazines who have also donated to two or more fundraising causes; and finally, a list titled "Fundraising Pledges By Credit Card-Canadian" purports to list Canadian donors to a variety of fundraising causes and events who, within the previous 24 months, have paid for their pledge/purchase over the telephone with a major credit card.⁵⁰

⁵⁰ Note that the source of this information may not be non-profit organizations; it could also be credit card processing centres, individuals responding to surveys, or other sources.

LIST ENHANCEMENT, CONSUMER PROFILING, AND THE RISE OF DATABASES

Increasingly, lists of customers are enhanced with other information about them —both proprietary information available for sale in the marketplace, and publicly available information sourced from governmental agencies, civic organizations, and the like. Indeed, the value of a list depends in part on the number of selects (i.e., enhancements) it offers. While single-source lists of customers are still widely-used, industry players are increasingly able to offer multi-sourced lists of consumers developed in accordance with a highly specialized set of criteria suggesting that these consumers will likely be receptive to a particular product or service offering.

With respect to commercial enhancements, the owners of many large-volume databases often advertise their data as a valuable resource for use by smaller list owners, in order both to check the accuracy of their lists and to overlay or enhance with additional information.

With respect to publicly available information, some list owners are enhancing their lists with averaged data—for example, as was noted earlier in this chapter, the owner of one magazine list enhanced his information with average income and age information to make the list more useful to prospective purchasers. Moreover, as was discussed in the previous chapter, geo-demographic data is also commonly used to create customized contact lists, by using this information to filter names and addresses derived from directories or other sources. Such information is imputed to individual consumers based on their place of residence.

Although most of the trade in bulk consumer data takes the form of customized lists and group profiling, data owners and compilers are increasingly taking advantage of technology to develop individual consumer profiles for internal use. “Customer Relationship Management” has become a basic tenet of marketing. It involves using technology to gather as much information as possible about customers, and using that information to develop more effective marketing strategies. While we did not uncover evidence of Canadian data brokers offering individual consumer profile information (other than background checks) for sale in the open marketplace, we did find a growing business in database management. Moreover, our review of retailer privacy policies indicates that individual consumer profiling is widely practiced within corporations and corporate families.⁵¹

For their part, US-based data brokers are reaching into Canada and offering for sale personal profiles of Canadians derived from public records, private investigations, and other sources. In addition to the online search services noted above, both Acxiom Corporation, one of the largest and most powerful information brokers in the USA, and Abacus Alliance, a large data cooperative service based in the USA, recently opened Canadian offices.

METHODS OF INDUSTRY COMPLIANCE WITH PRIVACY LAWS

The discussion so far has not addressed industry practices with respect to consent; it has instead focused purely on data flows. This section addresses the key question of how data brokers respect individual consumer privacy.

In Canada, data protection in the private sector is governed by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) and substantially similar provincial laws in certain provinces. These statutes regulate the collection, use, and disclosure of personal information by private sector organizations.

⁵¹ See *op cit*, footnote 2.

PIPEDA is focused on the protection of “personal information”. This term is defined broadly under the Act, covering any “information about an identifiable individual” except the name, title, and business address or office telephone number of an employee of an organization. While not explicitly stated in the legislation, it may be argued that business email addresses and facsimile numbers would also fall outside the definition of “personal information.”

Anonymous data (i.e. information not associated with an individual) does not constitute “personal information” and is therefore not subject to the restrictions in the Act. Names, addresses, and telephone numbers published in public telephone directories are exempted from the requirement for knowledge and consent, as long as individuals can refuse to be listed in the directory.

PIPEDA, or substantial similar provincial legislation, applies to every business, organization, and individual that engages in the collection, use or disclosure of personal information in the course of a commercial activity. “Commercial activity” includes the selling, bartering or leasing of donor, membership or other fundraising lists.

At the heart of PIPEDA lie notions of “reasonable purposes” and “consent.” Organizations are required to obtain the consent of individuals for the collection, use and disclosure of their personal information. In addition, the purposes for that collection, use and disclosure must be made known to the individual contemporaneously with the provision of consent, and those purposes must be ones that a reasonable person would consider appropriate in the circumstances.

COMPLIANCE METHODS OF DATA OWNERS

Data owners who wish to disclose identifying customer data to (a) affiliates or third parties or (b) use it for secondary purposes must therefore first obtain consent from the individual customers to such use or disclosure. Retailers and service providers usually obtain customer consent passively, by describing the intended use or disclosure in their terms of service or privacy policy and then allowing the customer to opt-out. A better practice, followed by some retailers, manufacturers (on product registration cards), and others (e.g., Canada Post with respect to Change of Address requests) is to provide notice of the use or disclosure along with a simple opt-out mechanism to consumers at the time of registration or ordering. Relatively few data owners follow the most privacy-respectful practice of obtaining explicit, opt-in, permission from consumers before engaging in any secondary uses or disclosures.⁵²

COMPLIANCE METHODS OF DATA BROKERS

Collect, use or disclose anonymous data only

A number of data brokers take the position that PIPEDA does not apply to them because they do not collect, use or disclose “personal information”. Companies that deal only with aggregated geo-demographic or other non-personal data fall into this category. For example, the Print Measurement Bureau (PMB) states in its privacy policy:

PMB does not have access to, nor does it use, data on individual respondents selected within the sample of any research study conducted on behalf of PMB by its research suppliers. All personal data disclosed to PMB by its research suppliers are in aggregate form only, meaning that there is no personal information whatsoever, and it is impossible to identify individual respondents.

⁵² See *Compliance with Canadian Data Protection Laws: Are Retailers Measuring Up?* (CIPPIC; April 2006).

Likewise, InfoCanada takes the position that, because it collects only non-personal aggregated information and data published in public telephone directories, it is exempt from the Act.⁵³

Credit bureaus also rely on PIPEDA's limited application when they sell geographically aggregated consumer credit information by postal code or other area indicator.

Obtain consent from individual survey respondents

Those data brokers who collect information directly from individuals (e.g., ICOM, Bluelist, BBM) must ensure that they get consent from those individuals to all uses and disclosures of their personal information. In its promotional materials, ICOM states that "any consumer list coming from ICOM includes the responder's consent to receive further offers so mailers are assured consumer privacy is being respected." Bluelist's privacy policy is comprised of an almost identical statement: "Any consumer data coming from Bluelist.ca includes the responders consent to receive further offers so clients are assured that consumer privacy is being respected."

BBM's privacy policy addresses consumers directly, and states that BBM obtains express consent from survey respondents to any use or disclosure of personally-identifying information:

Any time you participate as a respondent, whether in person or by telephone, mail, broadcast ratings meter, or the Internet, you can be assured that your individual responses will be kept confidential and never linked to your personal identifying information without your express permission. Your personal identifying information will never be sold to anyone.

Require certification from data owners that consent has been obtained from individual consumers

It is not practicable for list managers, brokers, or data users to contact each individual in a marketing list in order to confirm that they consent to the collection, use and disclosure of their personal information for that purpose. Even if such an activity were undertaken, it is most likely that the individuals contacted would not be able to confirm or deny whether or not they gave such consent, as often individuals do not track what consents they have given, and in many cases may not even realize when such consent is being provided. Hence, these intermediaries rely on data owners to obtain that consent. For example, Canada's largest data brokerage company, Cornerstone, states in its privacy policy:

Cornerstone makes all reasonable efforts to ensure that organizations providing personal information to us or to our Clients have obtained consent from the consumer before disclosing this personal information. Cornerstone ensures that all list and other media owners have provided their consumers with a meaningful opportunity to decline to have their name or other information used for any further marketing purposes by a third party.

For the benefit of its customers, Cornerstone places the following statement at the bottom of many of its datacards: "List Owner asserts that this list is subject to and compliant with Chapter 5 of the Statutes of Canada 2000."

24/7 Canada markets its products as "permission-based email lists", and states in its privacy policy (addressing consumers directly): "If you receive an e-mail, it is because you have agreed to receive the publication or mailing from a particular organization."

⁵³ CIPPIC has challenged this by way of a complaint to the Privacy Commissioner of Canada, arguing that while InfoCanada's collection is exempt, its subsequent compilation and sale of consumer lists organized by demographic characteristic constitutes "use and disclosure of personal information" and thus implicates PIPEDA. See, <<http://www.cippic.ca/en/projects-cases/privacy/>> .

Resolve Corporation states in its privacy policy:

RESOLVE shall, within each client contract, ensure that RESOLVE's client has obtained consent for RESOLVE to process their information. This consent may be written, implied, or oral. RESOLVE shall track and record the type of consent obtained by the client.

Credit bureaus also rely on their members to obtain consent from consumers before disclosing or retrieving information about them to or from the credit bureau database. Indeed, credit reporting legislation puts the onus of notifying consumers and obtaining their consent on those requesting or providing the information.⁵⁴ In this respect, Equifax's privacy policy states:

"...[W]e require every user to certify that reports will be requested in compliance with legal requirements. Random audits are conducted to validate compliance.... ."

TransUnion's privacy policy states:

"...[T]he personal information appearing in our credit-reporting system is generally reported to us by credit grantors or other institutions that are responsible for obtaining consumer consent to do so"....

Monitor list usage to ensure that restrictions are being respected

According to industry representatives, it is a common practice for list owners or managers to seed lists with fictitious names that resolve to addresses that are monitored by representatives of the renting company so as to determine whether or not the list is being used in accordance with general legal requirements as well as the specific terms of the rental agreement (such as "one time use"). Data owners can thereby detect unauthorized uses or disclosures, including those for which customer consent was not obtained.

Regular checking against the CMA's "Do Not Call/Do Not Mail" lists

The only centralized registry through which Canadian consumers can get off marketing lists is currently operated by the Canadian Marketing Association ("CMA"). As noted below, the CMA requires that its members run their lists through this registry when conducting marketing campaigns, in order to ensure that consumer requests not to be contacted are respected.

Industry standards

The Canadian Marketing Association, which represents the majority of Canadian companies involved in direct marketing, requires that its members follow a Code of Ethics and Standards of Practice⁵⁵ that include detailed rules aimed at respecting consumer privacy. These rules include:

- providing consumers with a meaningful opportunity to decline to have their name or other personal information used for further marketing purposes by the organization or a third party;
- making all reasonable efforts to respond to consumer inquiries about the source of his/her name used in any information-based marketing program;
- using the CMA's Do Not Mail/Do Not Call service when conducting marketing campaigns;

⁵⁴ *Ontario Consumer Reporting Act*, R.S.O. 1990, c.33, s.10.

⁵⁵ CMA Code of Ethics and Standards of Practice, <<http://www.the-cma.org/regulatory/codeofethics.cfm>>.

- agreeing with all those involved in a transfer of mailing lists on the exact nature of the list's intended usage prior to giving permission for any use of the list or transfer of list information; and
- taking appropriate measures to ensure against unauthorized access, alteration or dissemination of list data.

However, the CMA rules do permit organizations to assume consent on the part of their existing customers to the company's own marketing of goods and services "directly related to the customer's original transaction".

The CMA also provides its members with a guide to compliance with Canadian privacy legislation.⁵⁶ These guidelines include distinguishing between situations in which express consent, negative option, or implied consent is appropriate. Referring to PIPEDA's requirement for knowledge and consent of individuals to the collection, use or disclosure of their personal information, the CMA provides the following guidance to marketers:

This section recognizes that different types or forms of consent are appropriate to different types of information and their intended uses, and it reflects CMA members' use of:

- (a) Express consent for the collection and use of personal information typically considered sensitive (financial, credit, medical or health), as well as for any new use (see CESP at I6);
- (b) Negative option for the proposed transfer of non-sensitive personal information—meaningful opportunity to decline further marketing use or transfer must be presented before transfer and must be repeated at least once every three years (CESP at I1.1 and I1.2); and,
- (c) Implied consent for maintenance of established relationships.⁵⁷

DIFFERENCES BETWEEN CANADA AND THE U.S.A.

While we did not conduct a comparative study and therefore cannot provide a full analysis of the differences between the Canadian and American data brokerage markets, we can comment on a few interesting differences that came to light in our research.

First, we found that much more information is available about Americans than Canadians via consumer lists as well as individual search services. Certain information such as that from credit headers and birth records is frequently available for Americans but not for Canadians. Not only are there more lists of U.S. consumers than of Canadian consumers, there are more selects in the U.S. lists and more sources used to enhance the lists. Often, lists were limited to U.S. consumers even though subscription service or offer was equally available to Canadians. Where Canadians were included on the list, selects offered for U.S. consumers frequently did not apply to Canadians on the list.

We came across one data broker, R.L.Polk Canada Inc., that claimed to have stopped dealing with Canadians' personal information after PIPEDA came into force.⁵⁸ Credit bureaus in Canada are careful not to sell personal credit information other than via the regulated, permitted channels. According to industry representatives, many Canadian lists have been taken off the market as a result of PIPEDA, and companies are much more careful now about sharing their customer lists.

Giant U.S. data broker Choicepoint only offers individual criminal records and drivers licence searches on Canadians, compared to the much broader basket of information available about Americans. Acxiom, on the other hand, includes 14 million Canadians in its

⁵⁶ CMA Guidelines, <<http://www.the-cma.org/regulatory/guidelines.cfm>>.

⁵⁷ CMA Privacy Compliance Guide (2004) at 12. "CESP" = Code of Ethics and Standards of Practice" – see above.

⁵⁸ <<http://www.polk.ca>>

"InfoBase" database, but we were unable to determine what information about Canadians, beyond telephone and address listings, is included in this database.

CONCLUSIONS

There is a large and vibrant trade in the personal information of Canadian consumers, both within Canada and more widely in North America. The driver of this trade is the direct marketing industry, an outgrowth of competition among retailers to capture and retain consumers. While many organizations choose not to share their customer information with others, many other organizations consider the benefits of such sharing (whether monetary or in-kind) to outweigh the costs. Hence, an entire industry has developed around the gathering and sale of consumer information, the analyzing and enhancing of customer databases, and the sharing of customer lists.

Facilitating this trade are an array of companies that specialize in, among other things, list management and brokerage, geo-demographic population profiling, database analytics, individual consumer profiling, survey-based data-gathering, and multi-source data-mining. These companies assist retailers in developing and executing marketing campaigns, as well as in "customer relationship management". They also assist organizations with leveraging their customer data, both for internal use and for renting or selling to third parties.

Much of the consumer data traded commercially is aggregated and not particular to individuals, often taking the form of profiles of geographic groups of individuals – groups as small as 15 individuals in the case of credit bureaus. Postal codes are commonly used as the basis for group profiling. Such geographically defined "group data" may then be linked to individuals on the basis of their address.

Sources of consumer data include a variety of retailers and service providers such as magazines, newspapers, mail order retailers, email and other subscription services, travel agencies, product manufacturers (via registration/warranty cards), online educational and information services, and payment processing companies. Some charitable and non-profit organizations also make their member and donor lists available for rent. In addition, a number of companies specialize in the sale of personal consumer data gathered via surveys and contests.

Individuals thus give up their personal data in various capacities: as purchasers, subscribers, registrants, members, cardholders, donors, contest entrants, survey respondents, and even mere inquirers.

While the gathering and use of personal data for target marketing purposes may be relatively harmless, it raises significant privacy concerns. In particular, the increasing accumulation of personal data and consolidation of databases leaves individuals vulnerable to abuses by those with access to the data. Once released into the marketplace, personal data cannot be retrieved. Potential uses of this data are limited only by law and ethics. It is not clear, from this study, to what extent individuals are aware of, let alone consent to, the collection, use and disclosure of their personal information through these various channels. Although merely descriptive in nature, the findings of this study raise important questions deserving of further research:

1. Are data owners and compilers obtaining valid consent as required under PIPEDA?

A parallel study conducted by CIPPIC sheds light on this question with respect to online retailers.⁵⁹ Further research is needed to follow up on some of the questionable practices suggested by our research on the data brokerage industry – e.g., the consent-gathering practices of survey-based data compilers, travel agencies and airline ticketing agencies who sell data, and credit card issuers or their agents who sell data. Of particular concern is the common practice of gathering consumer data via warranty/registration cards.

⁵⁹ See *Compliance with Canadian Data Protection Laws: Are Retailers Measuring Up?* (CIPPIC; April 2006).

2. What uses, other than marketing and fundraising, are made of personal consumer information initially gathered and/or shared for marketing purposes?

We found evidence of government purchase of consumer data from marketing databases, but have not yet been able to determine the purposes for which the data is being used. Further research is needed to identify all uses to which consumer data is being put.

3. Does PIPEDA provide sufficient protection to individuals in respect of the sale of aggregated, non-personal information?

Our research indicates that such "anonymous" data is in fact not very anonymous, given the size and geographically defined nature of the population groups in question, and the relative ease with which it can be linked to individuals. In July 2005, CIPPIC filed a formal complaint with the federal Privacy Commissioner about one Canadian data broker that specializes in matching non-personal geo-demographic data from Statistics Canada with names and addresses from telephone directories in order to compile consumer lists for sale.⁶⁰

4. Does PIPEDA provide sufficient protection to individuals in respect of the use of names, addresses and telephone numbers published in the telephone directory?

Under PIPEDA, telephone book information is exempted from the normal requirement for knowledge and consent. Unlike other publicly available information such as court records or public registry data, however, it can be used for any purpose, subject only to the general requirement that such purpose be reasonable and appropriate in the circumstances.

This report sheds light on an industry that is poorly understood by those whose personal information forms its lifeblood. Privacy advocates have long expressed concern about the extent of information gathering, analysis and sharing among companies for marketing purposes, but have had limited understanding of how personal information is initially collected, how it makes its way from one company to another, what form it takes when traded in the marketplace, and to whom it is ultimately available. It is hoped that this report will provide researchers, consumer advocates, policy makers, and others with useful information on which to design effective laws and policies for protecting personal information in the marketplace.

⁶⁰ See < <http://www.cippic.ca/en/projects-cases/privacy/>>, under "PIPEDA Complaints" – "InfoCanada".

BIBLIOGRAPHY

BOOKS

Aaker, David A., V. Kumar & George S. Day. *Marketing Research*, 6th ed. (New York: John Wiley & Sons, 1998).

Baker, Sunny & Kim Baker. *Market Mapping: How to Use Revolutionary New Software to Find, Analyze, and Keep Customers* (New York: McGraw-Hill, 1993).

Bickerton, Pauline, Matthew Bickerton & Upkar Pardesi, *Cybermarketing: How to Use the Superhighway to Market Your Products and Services* (Oxford: Butterworth-Heinemann, 1996.)

Blumberg, Donald F. *Managing High-Tech Services Using a CRM Strategy* (Boca Raton, FL: CRC Press, 2000).

Bradley, Frank. *Strategic Marketing in the Customer Driven Organization* (Chichester, West Sussex: John Wiley & Sons, 2003).

Clarke, Irvine III & Theresa Flaherty, eds. *Advances in Electronic Marketing* (Hershey, PA: Idea Group, 2005).

Crask, Melvin, Richard J. Fox & Roy G. Stout. *Marketing Research Principles & Applications* (Englewood Cliffs, NJ: Prentice-Hall, 1995).

Curry, David J. *The New Marketing Research Systems: How to Use Strategic Database Information for Better Marketing Decisions* (New York: John Wiley & Sons, 1993).

Dickinson, John R. *The Bibliography of Marketing Research Methods* (Lexington, MA: D.C. Heath & Company, 1986).

Fairlie, Robin. *Database Marketing and Direct Mail: A Practical Guide to the Techniques and Applications* (London: Kogan Page, 1993).

Hughes, Arthur Middleton. *The Customer Loyalty Solution: What Works (and What Doesn't) in Customer Loyalty Programs* (New York: McGraw-Hill, 2003).

Kumar, V., Aaker, David A. & George S. Day, *Essentials of Marketing Research* (New York: John Wiley & Sons, 1999).

Larson, Erik. *The Naked Consumer* (New York: Henry Hold and Company, 1992).

Lewis, William J. *Data Warehousing and E-Commerce* (Upper Saddle River, NJ: Prentice-Hall, 2001).

Linchitz, Joel. *The Complete Guide to Telemarketing Management* (New York: Amacom, 1990).

Marakas, George M. *Modern Data Warehousing, Mining and Visualization: Core Concepts* (Upper Saddle River, NJ: Pearson Education, 2003).

Neal, Cathy, Pascale Quester & Del Hawkins. *Consumer Behaviour: Implications for Marketing Strategy*, 2d ed. (Roseville, NSW: McGraw Hill Book Company Australia, 2001).

O'Connor, John, Eamonn Galvin & Martin Evans. *Electronic Marketing: Theory and Practice for the Twenty-First Century* (Harlow, Essex: Pearson Education, 2004).

O'Harrow, Robert Jr. *No Place to Hide: Behind the Scenes of our Emerging Surveillance Society*, (New York: Simon & Shuster, 2005).

Shaw, Robert & Merlin Stone. *Database Marketing* (Aldershot: Gower Publishing Company, 1988).

Solove, Daniel J. *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2004).

Smith, P.R. & Dave Chaffey. *eMarketing eXcellence: The Heart of eBusiness* (Oxford: Butterworth-Heinemann, 2002).

Stevens, Robert E. et al. *The Marketing Research Guide* (New York: The Haworth Press, 1997).

Wenstein, Art. *Handbook of Market Segmentation: Strategic Targeting for Business and Technology Firms*, 3d ed. (Binghamton, NY: Haworth Press, 2004).

Wilson, Alan. *Marketing Research: An Integrated Approach* (Harlow, Essex: Pearson Education, 2003).

PERIODICALS AND ARTICLES

Rajen Akalu, "Implementing PIPEDA: A Review of internet privacy statements and online practices" (2005) University of Toronto,
<http://pipedaproject.atrc.utoronto.ca/index.php?option=com_content&task=view&id=1&Itemid=1>.

Beth Givens, "The Information Marketplace: Merging and Exchange of Consumer Data" (2001) Federal Trade Commissioner Workshop, Washington D.C.,
< http://www.privacyrights.org/ar/ftc-info_mktpl.htm>.

Christopher Hoofnagle, "Big Brother's Little Helpers: How Choicepoint and other commercial databrokers collect and package your data for law enforcement" (Summer 2004) 29 N.C.J. Int'l L. and Com. Reg. 595,
< http://papers.ssrn.com/sol3/papers.cfm?abstract_id=582302>.

Gerardo Ludert, "Consumer Profiling in the e-Commerce Industry: An empiracle and descriptive analysis" (2004) University of Ottawa (unpublished).

Lawerence Scanlan, "Someone to Watch Over Me" (Fall 2004) Queen's Alumni Review at 13-16.

Michael Shnayerson, "The Danger List" (December 2004) Vanity Fair at 233-246.

WEB RESOURCES

American Marketing Association:

<<http://www.marketingpower.com/live/mg-dictionary.php?>>.

Canadian Marketing Association,

<<http://www.the-cma.org/>>.

Cornerstone Canada's Database Glossary,

<<http://www.cstonecanada.com/primer/glossary.asp>>.

Direct Marketing A-Z,

<<http://dma-z.com/dirs/broker>>.

Direct Marketing Directory,

<<http://www.minokc.com/dmnetwork/>>.

Electronic Privacy Information Center (EPIC).

<<http://www.epic.org/privacy/profiling/>>.

InfoCanada's glossary,

<<http://www.infocanada.ca/service/ca/glossary.aspx#S>>.

The Direct Marketing Association (USA),

<<http://www.the-dma.org/>>.

Databroker Study – Experts Consulted

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