



November 21, 2016

Via electronic submission to <https://ftcpublic.commentworks.com/ftc/disposalrule/>

Secretary Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex H)
Washington, DC 20580

RE: Disposal Rule, 16 CFR part 682, Project No. 165410

Dear Secretary Clark:

The Data & Marketing Association (“DMA”) provides these comments in response to the Federal Trade Commission’s (“Commission” or “FTC”) Request for Public Comment on its rule regarding Disposal of Consumer Report Information and Records (the “Disposal Rule” or “Rule”) published on September 15, 2016.¹ While the Rule applies to entities that maintain or otherwise possess “consumer information” for a business purpose,² the Commission has also stated in its guidance that it “encourages those who dispose of any records containing a consumer’s personal or financial information to take similar protective measures.”³ As DMA’s diverse membership includes not only businesses that use consumer reports, but also those that maintain records of consumers’ personal or financial information, we welcome the opportunity to comment on the Commission’s proposed changes to the Disposal Rule. DMA believes, as discussed in more detail below, that “consumer information” should only include data that is actually linked to particular individuals.

Founded in 1917, DMA (www.thedma.org) is the community that champions deeper consumer engagement and business value through the innovative and responsible use of data-driven marketing.⁴ DMA’s membership is made up of today’s leading tech and data innovators, brand marketers, agencies, service providers, and media companies. By representing the entire marketing ecosystem—from demand side to supply side—DMA advances the data-driven marketing industry and serves our members through four principal pillars of leadership: advocating for marketers’ ability to responsibly gather and refine detailed data; promoting

¹ Federal Trade Commission, Disposal of Consumer Report Information and Records, Request for Public Comment, 81 Fed. Reg. 63435 (September 15, 2016) (hereinafter *Request for Public Comment*).

² 16 C.F.R. § 682.3.

³ FEDERAL TRADE COMMISSION, DISPOSING OF CONSUMER REPORT INFORMATION? RULE TELLS HOW (2005), available at <https://www.ftc.gov/tips-advice/business-center/guidance/disposing-consumer-report-information-rule-tells-how>.

⁴ THE DATA & MARKETING ASSOCIATION, www.thedma.org.



innovation that helps consumers and marketers alike; educating today’s marketers to grow and lead marketing organizations in the ever-increasing omnichannel world; and connecting industry participants to stay current, learn best practices and gain access to emerging solutions.

The Commission noted in the Request for Comment that under the current Rule, “[c]onsumer information does not include information that does not identify individuals, such as aggregate information or blind data” and asked whether the rule should define “aggregate information” or “blind data.”⁵ Additionally, the Commission has asked whether the definition of “consumer information” should be modified, and whether it should include “information that can be reasonably linked to an individual in light of changes in relevant technology or market practices.”⁶

Twelve years ago, the Commission declined to include aggregate or blind information in the definition of consumer information. At the time, the Commission stated that consumer information “does not include information that does not identify individuals, such as aggregate information or blind data” to emphasize that this type of information would not be covered by the definition.⁷ This reasoning remains the same today. Consumer information should only include data that would actually identify particular individuals.

The purpose of the Disposal Rule is to protect consumers from identity theft. Broadening the definition of consumer information to include data that does not, by itself, identify individuals, is unnecessary and would introduce greater uncertainty to the detriment of consumers. An anonymous identifier that is reasonably linked to a device does not immediately allow an entity to identify a specific individual. An anonymous identifier is not synonymous with data tied to a consumer’s name, mailing address, or email address. Instead, this data identifies a web browser or an Internet connected device that may be used by more than one person. This approach, taken in the market today, is in fact more “privacy friendly” to consumers as it allows the industry to operate on a non-identifiable basis, and removes incentives to keep identifiable data.

The Commission should not include data that does not, on its own, identify a specific individual in the definition of consumer information. Maintaining the current definition is consistent with the statute, will help limit any unintended consequences of the Commission’s rulemaking, and ensure that the Rule continues to conform to the well-settled understanding in the marketplace. Expanding the scope of the Disposal Rule could unnecessarily risk stifling an innovative sector that has created enormous job opportunities and provides consumers with robust benefits. Furthermore, the existing regulatory framework is complemented by enforceable self-regulatory codes of conduct that foster market innovation to the benefit of consumers.

⁵ See Request for Public Comment at 63437.

⁶ *Id.*

⁷ 69 Fed. Reg. 68692.



Over four decades, DMA has helped ensure that data is used responsibly through the robust and proactive enforcement of the *Guidelines for Ethical Business Practice* (“*Guidelines*”) against both DMA members and non-member companies across the Data-Driven Marketing Economy.⁸ Specific to the disposal of consumer information, Article #37 of the *Guidelines* sets forth certain “responsibilities” for providing secure transactions and protecting personally identifiable information against unauthorized access, alteration, or dissemination of data. The *Guidelines*, which are regularly updated to reflect changes in technology and marketing practices, require organizations to employ and routinely assess data retention, destruction, and deletion practices.

As the Commission concludes its regulatory review of the Disposal Rule, DMA recommends that the Commission maintain the current definition of “consumer information.” Regulators should encourage participation in self-regulation to address issues related to the disposal of consumer information rather than prescribing regulations. This approach will bolster consumers’ benefits from innovative technologies, encourage innovation, and promote economic growth, while effectively managing the security of consumer information.

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DMA appreciates the opportunity to submit these comments. Please do not hesitate to contact me with any questions at (202) 344-4654.

Sincerely,

/S/

Emmett O’Keefe
Senior Vice President, Advocacy
Data & Marketing Association

Cc: Stu Ingis, Venable LLP
Tara Sugiyama Potashnik, Venable LLP
Sheena Thomas, Venable LLP

⁸ THE DATA & MARKETING ASSOCIATION, *Guidelines for Ethical Business Practice* (2016), available at <https://thedma.org/accountability/ethics-and-compliance/dma-ethical-guidelines/>.