

PROTECTING CONSUMERS IN A WORLD OF BIG DATA

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NW Common Ground Conference
Seattle, Washington

REFLECTS VIEWS OF SPEAKER AND NOT NECESSARILY VIEWS OF FTC COMMISSIONERS OR OTHER STAFF

DATA PROLIFERATION

BALANCING OPPORTUNITY AND RISK

- LAST YEAR, ESTIMATED THAT 90 PERCENT OF THE WORLD'S DATA WAS GENERATED IN THE TWO PRECEDING YEARS
- TODAY, THE OUTPUT OF DATA IS DOUBLING EVERY TWO YEARS
- ABILITY TO COMBINE OFFLINE AND ONLINE DATA
- ADVANCES IN COMPUTATIONAL AND STATISTICAL METHODS MEAN THAT THIS MASS OF INFORMATION CAN BE EXAMINED TO IDENTIFY CORRELATIONS, MAKE PREDICTIONS, DRAW INFERENCES, GLEAN NEW INSIGHTS **(ASSUMPTIONS ABOUT WHAT CONSUMERS WANT AND HOW THEY WILL BEHAVE)**

DATA SECURITY ENFORCEMENT

IMPACT OF BIG DATA

- FTC HAS OBTAINED MORE THAN 50 CONSENT ORDERS AGAINST COMPANIES CHARGED WITH FAILING TO TAKE REASONABLE MEASURES TO PROTECT CONSUMER DATA
 - PAYMENT CARD DATA, SOCIAL SECURITY NUMBERS, ACCOUNT PASSWORDS, HEALTH DATA, INFORMATION ABOUT CHILDREN
 - BROAD CROSS-SECTION OF INDUSTRIES AND PLATFORMS
 - 30 DECEPTION CASES; 20 UNFAIRNESS CASES
- UNDERLYING THEORY: A COMPANY'S DATA SECURITY MEASURES MUST BE REASONABLE IN LIGHT OF:
 - SENSITIVITY AND VOLUME OF CONSUMER INFORMATION IT HOLDS
 - SIZE AND COMPLEXITY OF ITS DATA OPERATIONS
 - COST OF AVAILABLE TOOLS TO IMPROVE SECURITY AND REDUCE VULNERABILITIES
- COMMISSION DOES NOT REQUIRE PERFECT SECURITY AND FACT THAT A BREACH OCCURRED DOES NOT MEAN THAT LAW WAS VIOLATED

DATA SECURITY LEGISLATIVE RECOMMENDATION

FTC PROPOSAL TO CONGRESS

- LEGISLATION THAT WOULD STRENGTHEN EXISTING DATA SECURITY STANDARDS
- REQUIRE COMPANIES TO NOTIFY CONSUMERS IN THE EVENT OF A BREACH
- GIVE THE FTC THE POWER TO SEEK FINES IN APPROPRIATE CASES IN WHICH COMPANIES HAVE FAILED TO IMPLEMENT REASONABLE DATA SECURITY SAFEGUARDS

PRIVACY ENFORCEMENT

IMPACT OF BIG DATA

- SHARING OF DATA WITH THIRD PARTIES CONTRARY TO CLAIMS MADE WHEN THE DATA WAS COLLECTED AND CONTRARY TO CONSUMERS' EXPECTATIONS ABOUT HOW THE DATA WOULD BE USED
 - IN **GOOGLE**, FTC ALLEGED COMPANY USED DATA COLLECTED FOR ONE PURPOSE (TO REGISTER FOR, AND USE GMAIL) FOR ANOTHER PURPOSE (TO ENROLL CONSUMERS IN ITS NEW BUZZ SOCIAL NETWORK), CONTRARY TO PROMISES AND CHOICES PROVIDED TO CONSUMERS
 - IN **FACEBOOK**, FTC ALLEGED THAT THE COMPANY CLAIMED THAT CONSUMERS COULD DESIGNATE THEIR DATA AS PRIVATE BUT THEN REPEATEDLY SHARED THE DATA WITH THIRD-PARTY APPS AND ADVERTISERS
 - IN **GOLDENSHORES TECHNOLOGIES**, AN APP THAT ALLOWS CONSUMERS TO USE THEIR MOBILE DEVICES AS FLASHLIGHTS, FTC ALLEGED APP PROMISED IT WOULD COLLECT DATA FROM USERS' DEVICES FOR CERTAIN INTERNAL HOUSEKEEPING PURPOSES, BUT FAILED TO DISCLOSE THAT THE APP AUTOMATICALLY TRANSMITTED THE DEVICE'S LOCATION AND DEVICE ID TO THIRD PARTIES, INCLUDING MOBILE AD NETWORKS

PRIVACY ENFORCEMENT

RENT-TO-OWN MATTERS (2013-14)

- INVESTIGATED SOFTWARE MANUFACTURER DESIGNERWARE, THE COMPANY'S PRINCIPALS, 7 RTO RETAIL COMPANIES, AND MAJOR RTO FRANCHISOR AARON'S, INC., FOR ALLEGEDLY SPYING ON CONSUMERS USING SECRETLY INSTALLED PROGRAM ON RENTED COMPUTERS:
 - COULD SURREPTITIOUSLY MONITOR CONSUMERS' COMPUTER ACTIVITIES THROUGH KEYLOGGING AND SCREENSHOT CAPTURES
 - COULD ALSO ACTIVATE WEBCAM, FOR PROLONGED PERIODS OF TIME
 - INFORMATION CAPTURED WAS HIGHLY PERSONAL AND INVOLVED INFORMATION AND ACTIVITIES THAT CONSUMERS WOULD CONSIDER PRIVATE
 - INFORMATION WAS ALLEGEDLY GATHERED TO USE AS A COLLECTIONS TACTIC
 - FINAL ORDERS PROHIBITED USE OF MONITORING SOFTWARE AND RESTRICTED GEOLOCATION TRACKING, WHICH WAS A NEW FEATURE OF SOFTWARE THAT ALLOWED STORES TO TRACK CONSUMERS LOCATIONS VIA WIFI HOTSPOTS



FTC PRIVACY PRINCIPLES

2012

- PRIVACY BY DESIGN
- SIMPLIFIED CHOICE
- TRANSPARENCY
- BEFORE DATA IS COLLECTED OR USED IN A WAY THAT IS SURPRISING –INCONSISTENT WITH THE CONTEXT OF THE CONSUMER'S INTERACTION OR RELATIONSHIP WITH A BUSINESS – CONSUMERS SHOULD BE GIVEN A SAY
- DEFINING APPROPRIATE USES OF CONSUMER DATA AUGMENTS BUT DOES NOT REPLACE LIMITS ON THE COLLECTION OR RETENTION OF DATA OR WHETHER CONSUMERS HAVE A SAY IN THE PROCESS

DATA BROKERS

A Call for Transparency and Accountability



DATA BROKERS

2014

- BREADTH AND COMPLEXITY OF DATA BROKER INDUSTRY
 - COLLECT AND STORE *BILLIONS* OF DATA POINTS ABOUT U.S. CONSUMERS, WHICH THEY USE TO COMPILE EXTENSIVE PROFILES
 - BLUR LINE BETWEEN ONLINE AND OFFLINE BEHAVIOR
- CLASSIFY AND SEGMENT CONSUMERS BY RACE, ETHNICITY, INCOME, SOCIOECONOMIC STATUS, AGE, HEALTH CONDITIONS, RELIGIOUS AFFILIATION, POLITICAL LEANINGS
 - “FINANCIALLY CHALLENGED,” SINGLE PARENTS WITH “SOME OF THE LOWEST INCOMES” “LITTLE ACCUMULATION OF WEALTH”
 - “URBAN SCRAMBLERS” AND “MOBILE MIXERS,” HIGH CONCENTRATION OF LATINOS AND AFRICAN-AMERICANS WITH LOW INCOMES
 - “RURAL EVERLASTING,” SINGLE MEN AND WOMEN OVER AGE 66 WITH “LOW EDUCATIONAL ATTAINMENT AND LOW NET WORTH”
- NEGATIVE CONSEQUENCES
 - DENIED GOODS AND SERVICES AT PRICES OFFERED TO NEIGHBORS
 - SHUNTED TO INFERIOR CUSTOMER SERVICE OR SUBPRIME FINANCIAL OPPORTUNITIES
 - ADVERSE INSURANCE AND HIRING DETERMINATIONS

DATA BROKERS: FTC ENFORCEMENT

*CORNERSTONE AND BAYVIEW SOLUTIONS
(2014)*

- JUST LAST WEEK, FTC ANNOUNCED TWO ACTIONS AGAINST DATA BROKERS: DEBT SELLERS WHO POSTED INFORMATION ABOUT CONSUMERS' ALLEGED DEBTS ONLINE, INCLUDING:
 - FULL BANK ACCOUNT AND CREDIT CARD NUMBERS
 - DRIVERS LICENSE NUMBERS
 - BIRTH DATES
 - EMPLOYERS' NAMES
 - AMOUNTS PURPORTEDLY OWED ON PAYDAY LOANS, CREDIT CARD DEBT, AND OTHER OBLIGATIONS
- COMPLAINTS ALLEGED UNFAIR PRACTICE IN VIOLATION OF SECTION 5 OF THE FTC ACT
 - POTENTIAL CONSUMERS INJURY INCLUDES IDENTITY THEFT, TARGETED FOR "PHANTOM" DEBT COLLECTION, LOSS OF JOBS OR JOB OPPORTUNITIES
 - ALSO INVASION OF PRIVACY

DIFFERENT INTERNET EXPERIENCES FOR DIFFERENT GROUPS

WHO YOU ARE AFFECTS WHAT YOU SEE

- THE INTERNET IS TOUTED AS “THE GREAT EQUALIZER”:
INFORMATION ABOUT VIRTUALLY ANYTHING IS AVAILABLE TO ALL, IMMEDIATELY
- BUT, AT THE SAME TIME, WHAT YOU SEE MAY DEPEND ON WHO OR WHERE YOU ARE
- CONSIDER SOME EXAMPLES:

PRICE DISCRIMINATION IN ONLINE SHOPPING?

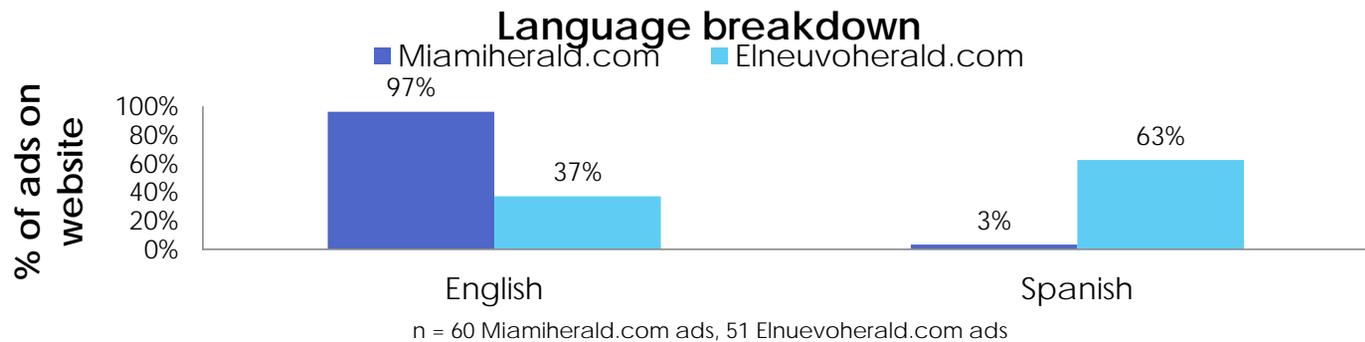
- *THE WALL STREET JOURNAL*, OCTOBER 23, 2014, REPORTED THAT COMPUTER SCIENTISTS AT NORTHEASTERN UNIVERSITY TRACKED SEARCHES ON 16 POPULAR E-COMMERCE SITES AND FOUND THAT:
 - SIX OF THOSE SITES USED DISCRIMINATORY PRICING TECHNIQUES
 - NONE OF THE SITES DISCLOSED PRICING DIFFERENCES TO CONSUMERS
- FOLLOWS 2012 *WSJ* STORY ABOUT STAPLES.COM CHARGING DIFFERENT PRICES FOR THE SAME ITEMS, BASED ON ESTIMATED LOCATION OF CONSUMER
 - DISCOUNTED PRICE FOR CONSUMERS WHO LIVED CLOSER TO RIVAL BRICK-AND-MORTAR STORES
 - THESE AREAS HAD AVERAGE HIGHER INCOMES THAN AREAS WITH HIGHER STAPLER PRICE

QUICK PEEK AT TWO LOCAL NEWS WEBSITES WITH THE SAME OWNER AND USING THE SAME AD NETWORK

MIAMIHERALD.COM HOMEPAGE



ELNUEVOHERALD.COM HOMEPAGE

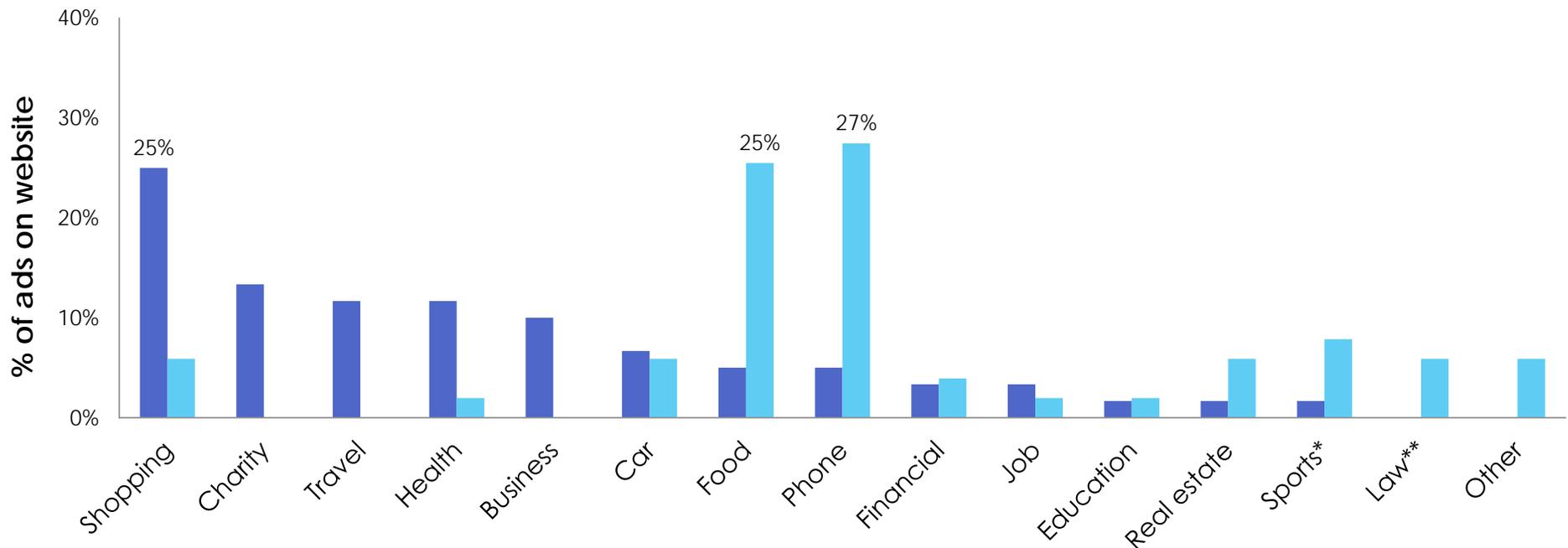


Research presented by Latanya Sweeney, Former Chief Technologist, FTC, and Jinyin Yang, FTC Summer Research Fellow, at FTC's Fraud Affects Every Community Workshop, October 29, 2014

MIAMIHERALD.COM SAW MORE GENERIC SHOPPING ADS FROM MULTIPLE ADVERTISERS WHILE ELNUEVOHERALD.COM HAD MORE ADS ON PHONE SERVICE AND FAST FOOD

Ad type breakdown

■ Miamiherald.com ■ Elnuevoherald.com



n = 60 Miamiherald.com ads, 51 Elnuevoherald.com ads

• Immigration law ad ** Soccer / World Cup ads

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ANECDOTAL EXPLORATION RAISES A QUESTION.

MIAMIHERALD.COM
(1 IN 61 ADS COLLECTED)

WASHINGTON DC

Jun 23: Obama Gives Homeowners A Bailout

If you owe less than \$625,000 on your home, use Obama's Refi Program. You'll be shocked when you see how much you can save.

Click Your Age:

18-25 26-35 36-45 46-55 56-65 66-75 OVER 75

Calculate New House Payment

ELNEUVOHERALD.COM
(2 IN 52 ADS COLLECTED)

WASHINGTON DC

Jun 23: Obama Gives Homeowners A Bailout

If you owe less than \$625,000 on your home, use Obama's Refi Program. You'll be shocked when you see how much you can save.

Click Your Age:

18-25 26-35 36-45
46-55 56-65
66-75 OVER 75

Calculate New House Payment

WASHINGTON DC

Jun 23: Obama Gives Homeowners A Bailout

If you owe less than \$625,000 on your home, use Obama's Refi Program. You'll be shocked when you see how much you can save.

Click Your Age:

18-25 26-35 36-45 46-55 56-65 66-75 OVER 75

Calculate New House Payment



FTC WORKSHOP

2014

- HOW ARE ORGANIZATIONS USING BIG DATA TO CATEGORIZE CONSUMERS?
- WHAT BENEFITS DO CONSUMERS GAIN FROM THESE PRACTICES? DO THESE PRACTICES RAISE CONSUMER PROTECTION CONCERNS?
- WHAT BENEFITS DO ORGANIZATIONS GAIN FROM THESE PRACTICES? WHAT ARE THE SOCIAL AND ECONOMIC IMPACTS, BOTH POSITIVE AND NEGATIVE, FROM THE USE OF BIG DATA TO CATEGORIZE CONSUMERS?
- HOW DO EXISTING LAWS APPLY TO SUCH PRACTICES? ARE THERE GAPS IN THE LEGAL FRAMEWORK?
- ARE COMPANIES APPROPRIATELY ASSESSING THE IMPACT OF BIG DATA PRACTICES ON LOW INCOME AND UNDERSERVED POPULATIONS? SHOULD ADDITIONAL MEASURES BE CONSIDERED?

BIG DATA LEGISLATIVE RECOMMENDATIONS

TRANSPARENCY AND CONTROL

- PERMIT CONSUMERS TO SEE INFORMATION ABOUT THEM AND OPPORTUNITY TO OPT OUT OF HAVING IT USED IN THE FUTURE
- BUSINESSES REQUIRED TO NOTIFY CONSUMERS THAT THE INFORMATION THEY ARE HANDING OVER WILL BE SHARED WITH DATA BROKERS, AND TO GIVE CONSUMERS A CHANCE TO SAY “NO”
- SENSITIVE INFORMATION SHARED ONLY WITH EXPRESS AFFIRMATIVE CONSENT
- OPPORTUNITY TO CORRECT WHEN CONSUMERS LIMITED IN ABILITY TO COMPLETE A TRANSACTION BECAUSE OF A DATA BROKER’S PRODUCT

FAIR CREDIT REPORTING ACT

- BUT WE ALREADY ENFORCE A LAW THAT PROVIDES THOSE KINDS OF PROTECTIONS IN CERTAIN CIRCUMSTANCES: THE FCRA!

FAIR CREDIT REPORTING ACT

15 U.S.C. §§ 1681 ET SEQ.

- GUIDING PRINCIPLES:
 - PRIVACY
 - LIMITED ACCESS TO CONSUMER REPORTS
 - SAME LIMITS ON GOVERNMENT ACCESS, WITH CERTAIN EXCEPTIONS
 - ACCURACY
 - RESPONSIBILITIES OF CONSUMER REPORTING AGENCIES AND INFORMATION FURNISHERS
 - CONSUMER DISPUTE PROCESS
 - FAIRNESS
 - NOTICES
 - OBSOLETE INFORMATION DELETED

FCRA AND BACKGROUND SCREENING COMPANIES

- FCRA APPLIES TO CONSUMER REPORTING AGENCIES (CRAs), INCLUDING:
 - COMPANIES THAT PROVIDE ORAL/WRITTEN REPORTS TO EMPLOYERS ABOUT THE PRIOR WORK EXPERIENCE OF APPLICANTS
 - COMPANIES THAT REGULARLY RESEARCH CRIMINAL RECORDS OR SOCIAL MEDIA HISTORY OF JOB APPLICANTS AND REPORT THEM TO CLIENTS
 - COMPANIES THAT ASSEMBLE OR EVALUATE INFORMATION ABOUT CONSUMERS' RENTAL HISTORIES AND PROVIDE THIS DATA TO LANDLORDS SO THEY MAY SCREEN POTENTIAL TENANTS

FCRA AND BACKGROUND SCREENING COMPANIES

- FCRA REQUIRES CRAS TO:
 - ENSURE MAXIMUM POSSIBLE ACCURACY OF INFORMATION THEY SELL
 - ENSURE THAT REPORTS ARE PROVIDED ONLY TO USERS WITH A PERMISSIBLE PURPOSE
 - INFORM USERS OF THEIR FCRA OBLIGATIONS:
 - NOTIFY CONSUMERS IF AN ADVERSE ACTION IS TAKEN AGAINST THEM BASED ON THE INFORMATION IN A CONSUMER REPORT
 - THE SOURCE OF THAT INFORMATION (THE CRA)
 - INFORM CONSUMERS THEY HAVE A RIGHT TO DISPUTE THE ACCURACY OF THE REPORT
 - HAVE PROCESS TO INVESTIGATE CONSUMER DISPUTES RE ACCURACY AND PROVIDE FREE COPIES OF REPORT UPON REQUEST

FTC FCRA ENFORCEMENT ACTIONS

HIRERIGHT (2012)

- FIRST ACTION BY FTC ALLEGING FCRA VIOLATIONS BY BACKGROUND SCREENING COMPANY:
 - INFO COLLECTED INCLUDED PUBLIC RECORD INFO, INCLUDING CRIMINAL HISTORIES
- COMPLAINT ALLEGED THAT HIRERIGHT VIOLATED FCRA BY:
 - FAILING TO ENSURE REPORTS MAXIMUM POSSIBLE ACCURACY OF REPORTS:
 - EXPUNGEMENT OF CRIMINAL RECORDS
 - MULTIPLE ITEMS FOR SAME OFFENSE
 - FILE MIXING (EVEN WITH DIFFERENT NAMES AND DOBS)
 - FAILING TO INVESTIGATE CONSUMER DISPUTES WITHIN 30 DAYS
 - NOT PROVIDING WRITTEN NOTICE TO CONSUMERS THAT PUBLIC RECORD INFORMATION WAS REPORTED TO EMPLOYERS OR MAINTAINING STRICT PROCEDURES TO ENSURE THAT SUCH INFORMATION WAS COMPLETE AND UP TO DATE (AT LEAST ONE IS REQUIRED WHEN USE PUBLIC RECORD INFO)
- CONSENT ORDER: \$2.6 MILLION CIVIL PENALTY AND INJUNCTIVE RELIEF

FTC FCRA ENFORCEMENT ACTIONS

SPOKEO (2012)

- DATA BROKER (IF IT LOOKS LIKE A DUCK . . .)
 - COLLECTED DETAILED PERSONAL PROFILES OF CONSUMERS, INCLUDING INFORMATION GLEANED FROM SOCIAL NETWORKS
 - SOLD INFO THRU PAID SUBSCRIPTIONS AND MARKETED AS EMPLOYMENT SCREENING TOOL
- COMPLAINT ALLEGED THAT SPOKEO VIOLATED FCRA BY:
 - PROVIDING CONSUMER REPORTS TO PERSONS WHEN IT DID NOT HAVE REASON TO BELIEVE HAD A PERMISSIBLE PURPOSE
 - FAILING TO ENSURE MAXIMUM POSSIBLE ACCURACY OF REPORTS
 - FAILING TO PROVIDER USERS OF ITS REPORTS (EMPLOYERS) THAT THEY WERE OBLIGATED TO NOTIFY CONSUMERS IF THEY TOOK ADVERSE ACTION BASED ON CONSUMER REPORT
- CONSENT ORDER: \$800,000 CIVIL PENALTY AND INJUNCTIVE RELIEF

FTC FCRA ENFORCEMENT ACTIONS

*FILIQURIAN (2013) AND WARNING
LETTERS TO OTHER MOBILE APP
DEVELOPERS (2012)*

- MOBILE APP AVAILABLE IN ITUNES OR GOOGLE STORE
 - 99¢ TO DOWNLOAD CRIMINAL RECORD SEARCHES
 - DISCLAIMERS IN APPS AND ON WEBSITE THAT COMPANY WASN'T FCRA-COMPLIANT AND PRODUCTS NOT INTENDED FOR EMPLOYMENT, INSURANCE, AND CREDIT SCREENING PURPOSES
 - BUT IF THE SHOE FITS:
 - AT THE SAME TIME, COMPANY ADVERTISED THAT ITS REPORTS COULD BE USED FOR JOB SCREENING

COMPLAINT ALLEGED THAT FILIQURIAN VIOLATED FCRA BY:

- FAILING TO ENSURE THAT USERS HAD A PERMISSIBLE PURPOSES
 - FAILING TO ENSURE MAXIMUM POSSIBLE ACCURACY OF INFORMATION
 - FAILURE TO TELL USERS AND FURNISHERS THAT THAT THEY WERE OBLIGATED TO NOTIFY CONSUMERS IF THEY TOOK ADVERSE ACTION BASED ON CONSUMER REPORT
-
- FOLLOWED WARNING LETTERS FTC SENT IN 2012 TO OTHER MOBILE APP DEVELOPERS THAT FCRA APPLIES IF THEY HAVE REASON TO BELIEVE THAT THE BACKGROUND REPORTS THEY COMPILER ARE BEING USED FOR EMPLOYMENT OR OTHER FCRA PURPOSES

FTC FCRA ENFORCEMENT ACTIONS

INFOTRACK (2014)

- BACKGROUND SCREENING COMPANY
- COMPLAINT ALLEGED THAT INFOTRACK VIOLATED FCRA BY:
 - FAILING TO ASSURE MAXIMUM POSSIBLE ACCURACY OF INFO OBTAINED FROM SEX-OFFENDER REGISTRY RECORDS
 - FAILING TO PROVIDE USER AND FURNISHER NOTICES
 - NOT PROVIDING WRITTEN NOTICE TO CONSUMERS THAT PUBLIC RECORD INFORMATION WAS REPORTED TO EMPLOYERS OR MAINTAINING STRICT PROCEDURES TO ENSURE THAT SUCH INFORMATION WAS COMPLETE AND UP TO DATE
- CONSENT ORDER: \$1 MILLION CIVIL PENALTY (SUSPENDED EXCEPT FOR \$60,000) AND INJUNCTIVE RELIEF

FCRA AND TENANT SCREENING

FIRST ADVANTAGE SAFERENT (2010)
AND WARNING LETTERS TO TENANT
SCREENING COMPANIES (2013)

- TENANT SCREENING COMPANY THAT COMPILED EVICTIONS, LEASE AND PAYMENT HISTORIES, AND CRIMINAL HISTORY RECORDS
- COMPLAINT ALLEGED FIRST ADVANTAGE VIOLATED FCRA BY:
 - REFUSING TO PROCESS FAXED REQUESTS FROM CONSUMERS TO INVESTIGATE INACCURACIES AND/OR RECEIVE A COPY OF THEIR REPORT
- CONSENT ORDER: \$100,000 CIVIL PENALTY AND INJUNCTIVE RELIEF
- IN 2013, FTC SENT WARNING LETTERS TO 6 DATA BROKERS THAT COMPILE TENANT-SCREENING REPORTS FOR USE BY LANDLORDS

FCRA GUIDANCE

- FOR CONSUMERS:
 - *BACKGROUND CHECKS: TIPS FOR JOB APPLICANTS AND EMPLOYEES (FTC/EEOC)*
 - *SAMPLE LETTER FOR DISPUTING CREDIT REPORT ERRORS*
 - *THESE AND OTHERS AVAILABLE AT*
[HTTP://WWW.CONSUMER.FTC.GOV/TOPICS/CREDIT-AND-LOANS](http://www.consumer.ftc.gov/topics/credit-and-loans)
- FOR INDUSTRY:
 - *BACKGROUND CHECKS: WHAT EMPLOYERS NEED TO KNOW (FTC/EEOC)*
 - *USING CONSUMER REPORTS: WHAT LANDLORDS NEED TO KNOW*
 - *AND MANY OTHERS AVAILABLE AT*
[HTTP://BUSINESS.FTC.GOV/PRIVACY-AND-SECURITY/CREDIT-REPORTING](http://business.ftc.gov/privacy-and-security/credit-reporting)