

MEDIA ADVISORY

FORDHAM LAW SCHOOL CENTER ON LAW AND INFORMATION POLICY (CLIP) STUDY REVEALS LACK OF TRANSPARENCY IN COMMERCIAL MARKETPLACE FOR SALE AND EXCHANGE OF STUDENT DATA Report Offers Policy Recommendations to Increase Transparency, Accessibility, and Choice

New York, NY (June 6, 2018) - The Center on Law and Information Policy at Fordham Law School ([Fordham CLIP](#)) has released its findings from a multi-year study on the commercial marketplace for the sale and exchange of student information.

Transparency and the Marketplace for Student Data sought to gain an understanding of the commercial marketplace for student data and the interaction with privacy law. Over several years, Fordham CLIP reviewed publicly-available sources, made public records requests to educational institutions, and collected marketing materials received by high school students.

The study uncovered and documented an overall lack of transparency in the student information commercial marketplace and an absence of law to protect student information.

Key findings of the reporter include:

- Parents and students are generally unable to determine how and why certain student lists were compiled or the basis for designating a student as associated with a particular attribute like race, religion, and purported interests.
- It is difficult to ascertain sources for student data; large school districts claim they do not sell directory information except to the military and other educational institutions.
- Data brokers operating in the student information marketplace frequently change names, merge and have affiliated relationships, making it difficult to identify student data brokers.
- Despite all of this, student lists are commercially available for purchase on the basis of ethnicity, affluence, religion, lifestyle, awkwardness and even a perceived or predicted need for family planning services.

The findings also revealed that a profitable ecosystem for commercial student data exists, but a lack of transparency and accessibility to information remains.

Based then on the research and the deficiencies in existing law and regulation of the commercial marketplace for student data, Fordham CLIP makes the following policy recommendations:

- The commercial marketplace for student information should not be a black market. Parents, students, and the general public should be able to reasonably know (i) the identities of student data brokers, (ii) what lists and selects they are selling, and (iii) where the data for student lists and selects derives. A model like the Fair Credit Reporting Act (FCRA) should apply to compilation, sale, and use of student data once outside of schools and FERPA protections. If data brokers are selling information on

students based on stereotypes, this should be transparent and subject to parental and public scrutiny.

- Brokers of student data should be required to follow reasonable procedures to assure maximum possible accuracy of student data. Parents and emancipated students should be able to gain access to their student data and correct inaccuracies. Student data brokers should be obligated to notify purchasers and other downstream users when previously-transferred data is proven inaccurate and these data recipients should be required to correct the inaccuracy.
- Parents and emancipated students should be able to opt out of uses of student data for commercial purposes unrelated to education or military recruitment.
- When surveys are administered to students through schools, data practices should be transparent, students and families should be informed as to any commercial purposes of surveys before they are administered, and there should be compliance with other obligations under the Protection of Pupil Rights Amendment (PPRA).

N. Cameron Russell, Executive Director of Fordham Law School's CLIP, and one of the co-authors of the study, said that Vermont's recent passage of H.764 - the United States' first legislation regulating commercial data brokers – is responsive to, and in part inspired by, problems identified in the Fordham CLIP study.

"I recently had the opportunity to testify before the Vermont House Committee on Commerce and Economic Development on the need for closer regulation and oversight of commercial data brokers, and the passage of H.764 requiring data brokers to register with the state as well as include specific information disclosures for brokers of student information underscores the need for an overhaul of the commercial student information marketplace, particularly increased transparency," said Russell.

Joel Reidenberg, Professor of Law and Founding Academic Director of Fordham Law's CLIP, says the passage of H.764 in Vermont is likely to have a national impact.

"The Vermont law is likely to become a national model and have a nationwide effect. Data brokers harvest personal information on a national scale and the Vermont registry requirement will result in increased national transparency for the identities and practices of these brokers," said Reidenberg.

The full report is available [here](#)

The [Center on Law and Information Policy \(CLIP\)](#) was founded to make significant contributions to the development of law and policy for the information economy and to teach the next generation of leaders. CLIP brings together scholars, the bar, the business community, technology experts, the policy community, students, and the public to address and assess policies and solutions for cutting-edge issues that affect the evolution of the information economy.

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