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Transparency and the Marketplace for Student Data

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ABSTRACT

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. This study seeks to provide 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 uncovers and documents an overall lack of transparency in the student information commercial marketplace and an absence of law to protect student information.

The study first describes the legal framework for data brokers selling student information and shows that existing privacy laws do not encompass these activities. Next, the study shows what this commercial ecosystem looks like. Specifically, the study maps the types of commercial solicitations students receive, the identities of data brokers confirmed to advertise the sale of student information, sources of student data in the commercial marketplace, the types of student data offered for sale, and the ways in which data brokers package it.

Based on the research and the large gap in law and regulation of the commercial marketplace for student data, the study offers a set of recommendations as follows:

- 1) The commercial marketplace for student information should not be a subterranean 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 the 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.
- 2) 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.

- 3) Parents and emancipated students should be able to opt out of uses of student data for commercial purposes unrelated to education or military recruitment.
- 4) 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).

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INTRODUCTION

The purpose of this study is to attempt to understand the commercial marketplace for student information. The data market is becoming one of the largest and most profitable marketplaces in the United States,² and data brokers³ may now have databases that store billions of data elements on nearly every United States consumer.⁴ As a society, however, we have decided that personal information about students is special – that this data merits heightened legal protection.⁵ Underlying this sensitivity to student data is the premise that information deriving from pursuit of an education should not be exploited without restraint.

At a minimum, student data governance and practices should be transparent.⁶ The direct marketing industry itself urges that data practices be transparent when information is from or about children, stating: “Marketers should effectively explain that the information is

² See WORLD ECONOMIC FORUM, PERSONAL DATA: THE EMERGENCE OF A NEW ASSET CLASS (2011), <https://www.weforum.org/reports/personal-data-emergence-new-asset-class> (explaining that personal data is becoming a new economic “asset class,” a valuable resource for the 21st century that will touch all aspects of society). See, e.g., Brian Naylor, *Firms Are Buying, Sharing Your Online Info. What Can You Do About It?*, NPR (July 11, 2016), <http://www.npr.org/sections/alltechconsidered/2016/07/11/485571291/firms-are-buying-sharing-your-online-info-what-can-you-do-about-it> (noting that Acxiom reported over \$800 million in revenue in 2015).

³ FED. TRADE COMM’N, DATA BROKERS: A CALL FOR TRANSPARENCY AND ACCOUNTABILITY 3 (2014) (defining data brokers as “companies whose primary business is collecting personal information about consumers from a variety of sources and aggregating, analyzing, and sharing that information . . .”).

⁴ *Id.* at iv.

⁵ See, e.g., Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g (2012); Regulations under FERPA, 34 C.F.R. § 99 (2011); Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h (2012); Student Online Personal Information Protection Act, Cal. Bus. & Prof. Code §§ 22584-22585 (2014); Data Quality Campaign, *Student Data Privacy Legislation: A Summary of 2016 State Legislation* (Sept. 2016).

⁶ See, e.g., 20 U.S.C. § 1232g(a)(5)(B) (2012) (noting that educational institutions are required to notify parents regarding what information they have defined as directory information.); *Id.* § 1232g(b)(2) (2012) (Subject to certain exceptions, prior written consent is required before institutions can disclose non-directory information. Prior written consent must include specification of the records to be disclosed, the purpose of the disclosure, and identification of the party or class of parties to whom the disclosure is to be made.).

being requested for marketing purposes. Information not appropriate for marketing purposes should not be collected. Upon request from a parent, marketers should promptly provide the source and general nature of information maintained about a child and allow for removal or correction.”⁷

Currently there is no federal privacy law specifically governing student data brokers.⁸ Yet, there is an obvious marketplace for student information. One data broker states that it has been “the nation’s premier provider of student marketing data” for over 40 years⁹ and that it now has a database of the mailing addresses of over 5 million high school students.¹⁰ Another offers data on students as young as two years old.¹¹ This information is being collected, marketed, and sold about individuals *because* they are students. Many data brokers gather personal information on students because it is helpful for higher education and those providing financial aid opportunities to have access to this data for recruiting purposes.¹² Here, parents and students may intend to turn over student information both for their benefit and with a

⁷ DIRECT MARKETING ASSOCIATION GUIDELINES FOR ETHICAL BUSINESS PRACTICE art. 15 (2016), <https://thedma.org/wp-content/uploads/DMA-Guidelines-2016.pdf>.

⁸ See *infra* Part II and note 17.

⁹ *About Us*, ASL MARKETING, <http://www.aslmarketing.com/about> (last visited July 18, 2017) (“For over 40 years, ASL Marketing has been the nation’s premier provider of student marketing data, focused on the highly desirable 13-34 year old market.”).

¹⁰ *High School Student Data Card*, ASL MARKETING, <http://www.aslmarketing.com/docs/DataCardsInfographic-High%20school.pdf> (last visited July 13, 2017).

¹¹ *Students Email List*, LAKE B2B, <https://www.lakeb2b.com/students-email-list> (last visited Aug. 8, 2017). LakeB2B sells a student email database that “has the names of students between the ages of 2 and 13.” *Id.* LakeB2B explains that its student lists contain preschool students and, thus, students between the ages of two and five (“The Student Email List from Lake B2B is one of the largest, most complete lists of students from preschool to graduate school and beyond.”). *Id.*

¹² See, e.g., *Privacy Statement*, THE NAT’L RESEARCH CTR. FOR COLL. AND UNIV. ADMISSIONS (NRCCUA), <https://www.nrccua.org/cms/About-Us/Privacy-Statement.aspx> (last visited July 19, 2016). See also *Frequently Asked Questions*, EDUC. RESEARCH CTR. OF AM. (ERCA), <http://www.studentresearch.org/faqs/> (last visited July 13, 2017) (“Our purpose is to facilitate high school students’ exploration of careers, post-secondary education options, and future employment, and to help parents and educators guide students to make informed decisions about their future.”).

direct nexus to education.¹³ However, there is also a commercial market for student data simply because students may make good consumers for products and services wholly unrelated to education.¹⁴ For example, one data broker advertises high school students as a “brand conscious and tech savvy group of consumers” and recommends their data be used for products such as “formal wear and limo services,” “smart phones and personal electronics,” or “apparel & footwear.”¹⁵

What does the commercial marketplace for student information look like? How transparent is it for a parent and the public? What can one find out about brokers selling student data? To gauge what limits, if any, existed for commercial exploitation of student data, Fordham CLIP randomly contacted one of the student data brokers it identified during the course of this research and discovered that the broker was perfectly willing to sell a list of “fourteen and fifteen year old girls for family planning services”:

. . . [Sales representative] here—ExactData—just wanting to touch base regarding that marketing list you had requested from us. I know that your target audience was fourteen and fifteen year old girls for family planning services. I can definitely do the list you’re looking for—I just have a couple more questions. If you can give me a call, 312-[XXX-XXXX]. Once again: [Sales representative], ExactData, 312-[XXX-XXXX]. Hope to hear back. Bye.¹⁶

¹³ See, e.g., *About Us*, SCHOLARSHIPS.COM, <https://www.scholarships.com/about-us/> (last visited July 13, 2017) (providing a database of scholarships and financial aid resources to which students have access after completing a questionnaire). See also *Frequently Asked Questions*, ERCA, <http://www.studentresearch.org/faqs/> (last visited July 13, 2017) (“[ERCA] connect[s] students and parents with educators, counselors, colleges and universities, and professional organizations and associations, all for the benefit of the student.”).

¹⁴ *The Nat’l Research Ctr. For Coll. & Univ. Admissions, Inc.*, F.T.C. File No. 022-3005, 2002 WL 31248527 (2002) (A data broker can use the data to “create lists of college-bound students that it sells to commercial entities for use in marketing. Such entities include, but are not limited to, consumer products manufacturers, credit card companies, direct marketers, list brokers, database marketing companies, and advertising agencies.”).

¹⁵ *High School Student Data Card*, *supra* note 9.

¹⁶ Telephone voicemail: Received from Sales Representative, Exact Data (Nov. 18, 2014) (transcript on file with authors). Despite the continued advertising of the

The data broker relentlessly followed up on Fordham CLIP's initial inquiry, eager and claiming to be able to sell this questionable list of labeled teenage girls. Yet, there is very little transparency as to the overall marketplace for student data. These types of lists about students are evidently available for purchase from data brokers, but the commercial marketplace is opaque from the perspective of students and parents.

For several years, Fordham CLIP studied the commercial marketplace for student information. We reviewed publicly-available sources, made public records requests to educational institutions, and collected marketing materials received by high school students. After all these efforts, we could only identify a limited number of data brokers definitively selling student information. Further, the student data brokers Fordham CLIP was able to identify frequently change names, merge, and have affiliated relationships.¹⁷

We were also often unable to determine sources of student data. Large school districts state that they are not selling directory information¹⁸ except to the military and other educational institutions. If student information is not coming from schools, then where is it coming from? Wearing the hat of a knowledgeable and motivated parent or student, and after years of research, Fordham CLIP was largely unable to discover data sources.

This study demonstrates the lack of transparency in the student information commercial marketplace. This report will first describe the legal framework, or absence of same, for data brokers selling student information. Then, given a lack of regulation and oversight, Fordham CLIP sought to determine what this commercial ecosystem looks like. After describing our research methodology, this report then offers its research findings and analysis regarding the types of commercial

sale of lists of students and their email addresses, a sales representative from Exact Data said in a follow-up phone call eighteen months later that the email addresses and purported student data were those of the parents and not the students. Telephone interview with "Ross," Customer Service Representative, Exact Data (May 4, 2016). Both assertions, the advertising claims to sell students' information and the sales representative's back-tracking, cannot be true. There is no way for anyone to know the truth without buying a list and checking or issuing a subpoena for a false advertising claim. This demonstrates a striking degree of opacity.

¹⁷ See *infra* Part IV.B.

¹⁸ See *infra* note 21.

solicitations that students receive, the identities of data brokers confirmed to advertise the sale of student information, the sources of student data in the commercial marketplace, the types of student data offered for sale, and the ways in which data brokers package it. This research study concludes with Fordham CLIP's final observations and policy recommendations.

II. LEGAL FRAMEWORK

Currently, there is no federal privacy law in the United States that specifically targets the use, retention or resale of student data by private-sector data brokers.¹⁹

FERPA²⁰ impacts collection of student data by regulating to whom and under what circumstances educational records may be disclosed by educational agencies and institutions.²¹ However, FERPA does not directly apply to private-sector data brokers²² and some student data types fall outside of FERPA's scope.²³ Often, this student

¹⁹ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, INFORMATION RESELLERS: CONSUMER PRIVACY FRAMEWORK NEEDS TO REFLECT CHANGES IN TECHNOLOGY AND THE MARKETPLACE 7 (2013) ("Currently, no comprehensive federal privacy law governs the collection, use, and sale of personal information by private-sector companies.").

²⁰ 20 U.S.C. § 1232g (2012). Regulations under FERPA are codified at 34 C.F.R. § 99 (2011).

²¹ *Id.*

²² Educational agencies and institutions must comply with FERPA or risk losing any federal funding administered by the Department of Education. 20 U.S.C. § 1232g. Data brokers, however, are neither educational institutions nor recipients of Department of Education federal funding.

²³ FERPA protection only attaches to educational records. Under FERPA, educational records are comprised of two types of information, directory and non-directory information. 20 U.S.C. § 1232g(a)(5)(B). Directory information – such as the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height as members of athletic teams, dates of attendance, degrees and awards received, and most recent previous educational agency or institution attended by the student – may typically be disclosed by schools without written consent from parents. 20 U.S.C. § 1232g(a)(5)(A)-(B). A parent can choose to restrict the release of directory information, however, by opting-out, 20 U.S.C. § 1232g(a)(5)(B), and this right transfers from the parents to the student when a student turns 18 years old or enters a post-secondary institution, 34 C.F.R. § 99.5. With respect to non-directory information

information outside of FERPA protection may be highly valuable to data brokers, such as metadata collected when students interact with a third-party app or service²⁴ or detailed information about students' eating habits.²⁵

The Children's Online Privacy Protection Act (COPPA)²⁶ likewise provides only limited protection for collection of student information, use of it, and trafficking in it.²⁷ One significant limitation is that COPPA only covers children up to age 13, and therefore does not apply to all students who may have their personal information collected and processed.²⁸ Similarly, if the student's information is derived from the child's parent, then COPPA is also inapplicable.²⁹ Perhaps most significantly, data brokers themselves are often not directly collecting

– all other information, such as social security numbers, not designated as directory information, *see, e.g.*, 24 C.F.R. § 99.3 (2011) – prior written consent is required, subject to certain exceptions, before institutions can disclose it if such data is personally identifiable, 20 U.S.C. § 1232g(b).

²⁴ *See, e.g.*, CALIFORNIA DEPARTMENT OF JUSTICE, READY FOR SCHOOL - RECOMMENDATIONS FOR THE ED TECH INDUSTRY TO PROTECT THE PRIVACY OF STUDENT DATA ii (2016), <https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersecurity/ready-for-school-1116.pdf> (“Ed Tech collects new types of data, such as metadata like a student's location and the type of device being used, which were not contemplated and may not be covered by longstanding federal laws on student and children's privacy.”).

²⁵ *See, e.g.*, Natasha Singer, *Scrutiny in California for Software in Schools*, N.Y. TIMES, Feb. 20, 2014, https://www.nytimes.com/2014/02/20/technology/scrutiny-in-california-for-software-in-schools.html?hpw&rref=education&_r=1 (“Under the federal education privacy law, schools that receive federal funding must generally obtain written permission from parents before sharing their children's educational records. But an exception allows school districts to share those records — which might include academic, disciplinary or disability information — with services like online homework assignment systems, reading apps or school bus companies. The exception requires schools to maintain control over contractors' use of students' educational records. But some student privacy experts caution that federal rules may not be explicit enough to cover some of the latest technologies like those used by lunch account services that, for example, can scan the veins in a child's palm and use that unique biometric pattern to identify a student.”).

²⁶ 15 U.S.C. §§ 6501–6506.

²⁷ COPPA governs the collection of personal information from children under 13 by certain operators of websites or online services. 15 U.S.C. § 6502. If a website or online service is directed at children or the operator knowingly collects personal information from children under 13, COPPA imposes certain requirements, including that the website obtain parental notice and consent. *Id.*

²⁸ *See id.* § 312.2.

²⁹ *See id.* § 312.3.

information from children online, but rather are simply downstream recipients of the personal data collected by others.³⁰ Therefore, although COPPA-covered operators are legally required to safeguard the confidentiality, security, and integrity of personal information collected from children,³¹ COPPA does not directly apply to data brokers receiving student data second-hand. Also, like FERPA, valuable student data may not be “personal information” as defined by COPPA and may be outside the scope of its protection.³² Thus, COPPA may not restrict data brokers from trafficking in student information.³³

The Federal Trade Commission (FTC) Act prohibits “unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.”³⁴ However, the FTC has applied the Act to only a limited number of data brokers alleging the FTC Act was violated by misrepresenting how student information was used and sold.³⁵

The Fair Credit Reporting Act (FCRA)³⁶ applies specifically to “consumer reporting agencies” assembling “consumer reports” for the purpose of evaluating eligibility for credit, insurance, employment, or another purpose specifically enumerated in the statute.³⁷ The FCRA does not apply to general purpose data brokers unless they are acting as a consumer reporting agency subject to the statute.³⁸ Therefore, only a small part of the commercial marketplace for student data falls within the FCRA’s limited scope.

³⁰ See, e.g., About Us, EXACT DATA, <https://www.exactdata.com/corporate/about-us/our-story.html> (last visited February 14, 2019) (“Exact Data sources consumer data from national database with approximately 210 million names, postal addresses, and telephone numbers, with approximately 700 selects, originating from over 2,000 different sources.”).

³¹ 16 C.F.R. § 312.8 (2013).

³² COPPA-protected “personal information” includes (1) a first and last name; (2) an address; (3) an e-mail address; (4) a telephone number; (5) a Social Security number; or (6) any other identifier that the FTC may determine permits the physical or online contacting of a specific individual. 15 U.S.C. § 6501(8) (2012).

³³ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-13-663, INFORMATION RESELLERS: CONSUMER PRIVACY FRAMEWORK NEEDS TO REFLECT CHANGES IN TECHNOLOGY AND THE MARKETPLACE 11 (2013).

³⁴ 15 U.S.C. § 45 (2012).

³⁵ See *infra* Part IV(B)(2)(a).

³⁶ Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681–1681x (2012).

³⁷ *Id.* §§ 1681a(d), 1681a(f), 1681b.

³⁸ *Id.*

There is recent momentum by state legislatures to fill in these large gaps and regulate the commercialization of student data,³⁹ but data brokers remain largely unfettered at the federal level to aggregate and profit off student information. Notably, California's Student Online Personal Information Protection Act (SOPIPA), enacted in 2014,⁴⁰ was the first state legislation to directly impose rules on website operators and online service providers that know their services are primarily designed, marketed, and used for K-12 school purposes.⁴¹ SOPIPA places limits on activities of covered operators such as selling students' data, targeting advertisements, generating profiles on students, and disclosing students' personal information.⁴² SOPIPA valuably fills a gap between FERPA-covered educational institutions and private-sector vendors and websites servicing schools and K-12 students. However, data brokers already in possession of student data or who obtain such information from sources outside of SOPIPA's scope possess student data with few constraints. Last year, in response to many of the issues identified in this study,⁴³ Vermont held hearings and on May 22, 2018 enacted a law that requires data brokers to register with the state and, inspired by testimony based on the preliminary findings of this study, requires that this registration include certain disclosures about the information data brokers possess about minors.⁴⁴ The Vermont legislation is the first of its kind in the United States.⁴⁵

³⁹ See, e.g., Amelia Vance, *Trends in Student Data Privacy Bills in 2016*, POLICY UPDATE (Nat'l Ass'n of State Bds. of Educ., Alexandria, Va.), May 2016, at 1. There has recently been a legislative push by states to protect student information from third party vendors and marketers. *Id.* at 1. In 2016, thirty-eight states considered a total of 185 student data privacy bills, *id.*, and fifteen states passed eighteen new student data privacy laws, DATA QUALITY CAMPAIGN, STUDENT DATA PRIVACY LEGISLATION: A SUMMARY OF 2016 STATE LEGISLATION 1 (2016). Arizona, Hawaii and Pennsylvania passed their first student data privacy laws in 2016. *Id.* at 5.

⁴⁰ CAL. BUS. & PROF. CODE §§ 22584-22585 (Deering 2018).

⁴¹ *Id.* § 22584(a).

⁴² *Id.* § 22584(b).

⁴³ See, e.g., OFFICE OF THE ATTORNEY GEN. AND DEP'T OF FIN. REGULATION, REPORT TO THE GENERAL ASSEMBLY OF THE DATA BROKER WORKING GROUP ISSUED PURSUANT TO ACT 66 OF 2017 (2017), <http://www.dfr.vermont.gov/sites/default/files/20171215%20Data%20Broker%20Working%20Group%20Report.pdf>.

⁴⁴ VT. STAT. H.764 (2018).

⁴⁵ AJ Dellinger, *Vermont Passes First-of-Its-Kind Law to Regulate Data Brokers*, GIZMODO (May 27, 2018), <https://gizmodo.com/vermont-passes-first-of-its-kind-law-to-regulate-data-b-1826359383>.

III. METHODS TO OBTAIN INFORMATION ON THE COMMERCIAL MARKETPLACE FOR STUDENT INFORMATION

Fordham CLIP researched the commercial marketplace for student information in various ways and from varying angles. First, Fordham CLIP collected and reviewed publicly-available online information on student data brokers obtained through websites, directories, media sources, Federal Trade Commission databases, and legal search indices.⁴⁶ Fordham CLIP searched for any information relevant to student data brokers or the sale of student information, hoping to gain an understanding of what information regarding student data brokers was available to the public by replicating the types of searches that a knowledgeable and motivated student or parent may do if he or she was seeking information.

Second, Fordham CLIP made public records requests to large public school districts⁴⁷ in the United States and to the New York State Department of Education.⁴⁸ Generally, with these public record requests, Fordham CLIP sought to gauge whether data brokers receive student information from educational institutions.⁴⁹ Fordham CLIP sought information on how public schools designate the types of student personal information classified as “directory information” under FERPA, who receives student “directory information” in bulk, how schools protect that information when released, and how much revenue

⁴⁶ A detailed methodology for Fordham CLIP’s search of publicly-available online information is attached as Appendix A.

⁴⁷ Fordham CLIP selected the following six school districts that were representative of public schools in large cities across the United States and sent public records requests to each: Boston Public Schools, Chicago Public Schools, Houston Independent School District, Los Angeles Unified School District, Miami-Dade Schools, and New York City Department of Education.

⁴⁸ We submitted public records requests to the New York State Department of Education in addition to the large public school districts because one of the student data brokers indicated that school registration records were one of its sources for student data. Telephone call with Customer Service Representative, Exact Data (May 4, 2016). None of the responses to Fordham CLIP’s public records requests indicate that schools are giving or selling student information to data brokers. *See infra* Part IV(C)(3).

⁴⁹ The study did not seek to and does not report on any educational institution’s compliance with legal obligations.

public schools receive for student “directory information.”⁵⁰

Third, Fordham CLIP collected marketing materials received by high school students to evaluate the types of advertisements students receive. Through each of these efforts, Fordham CLIP sought to gain information and gauge the transparency of student data brokers in the marketplace. Fordham CLIP attempted to identify student data brokers, investigate how data brokers obtain student data, determine what student information data brokers possess, learn how data brokers use student data, and study how organizations respond to requests for sources of student data and data practices relating to student information. Fordham CLIP was careful to focus on the marketplace for information about *students* and not about children’s information generally.

IV. FINDINGS

Fordham CLIP sought to gauge what types of commercial solicitations students receive, who the data brokers are that advertise student information for sale, where data brokers obtain student data, what student data brokers offer for sale, and how they package it.

A. WHAT TYPES OF COMMERCIAL SOLICITATIONS DO STUDENTS RECEIVE?

Fordham CLIP collected marketing solicitations received by students through mail and email to see what types of advertisements

⁵⁰ Each educational institution was formally requested pursuant to relevant public records law to provide: (1) a copy of the institution’s most recent annual notice to parents designating the types of student personal information classified as “directory information” by the institution pursuant to FERPA, (2) copies of all requests made during the last twelve months for student “directory information” that resulted in the release of information on more than 100 students, (3) copies of all contracts or agreements providing for the release of student “directory information” during the last 12 months, and (4) a copy of the institution’s current and prior fiscal year budget showing any revenue received by the institution for the release or sale of student “directory information.” The public records request Fordham CLIP made to the Boston Public Schools is attached as Appendix B.

target students. We requested that students collect mail and email solicitations they received in a 10- to 14-day time period.⁵¹

Fordham CLIP collected 232 commercial solicitations⁵² received through mail or email by 10 high school students from three school districts in New Jersey⁵³, New York⁵⁴ and Vermont.⁵⁵ Out of the 232 student solicitations Fordham CLIP received, 212 related to colleges, education funding, or the military. The remaining 20 advertisements students received were from the following organizations: AIG, ATW Lacrosse Camps, the American Red Cross, the Bernie Sanders campaign, Respecttomajorthings.com (credit card solicitation), Dental Implants, Dissolve Toenail Fungus, FreedomVoice, Grand Valley State University Lacrosse, Internet Income Shortcuts, the National Student Leadership Conference, New York Aquarium, Optima Tax Relief, Rosetta Stone, Under Armour, TurboTax, the Wildlife Conservation Society, and Zippy Loan. Although this is anecdotal data from a small sample set, it provides a snapshot of the types of commercial solicitations high school students receive.

Interestingly, during the course of collecting email solicitations received by students, Fordham CLIP's research email account was acquired as student contact information by a party unknown and the student solicitor would not indicate how it was obtained. Fordham CLIP created a new email address for the sole purpose of this research project and for students to forward to CLIP commercial email solicitations they received. This email account was used only for this research study and never before or after this research study for any other purpose.

⁵¹ For 10 to 14 days, each student collected items he or she received; students' collection periods occurred at various times during 2014, 2015, and 2016.

⁵² All items are on file with Fordham CLIP. All documents referenced as on file with Fordham CLIP are available on request for verification of the accuracy of this report.

⁵³ A suburban, large school district in New Jersey. *Search for Public School Districts*, U.S. DEP'T OF EDUC., NAT'L CTR. FOR ED. STATISTICS, <https://nces.ed.gov/ccd/districtsearch/>.

⁵⁴ A suburban, large school district in New York. *Search for Public School Districts*, U.S. DEP'T OF EDUC., NAT'L CTR. FOR ED. STATISTICS, <https://nces.ed.gov/ccd/districtsearch/>.

⁵⁵ A new, undesignated school district in Vermont. *Search for Public School Districts*, U.S. DEP'T OF EDUC., NAT'L CTR. FOR ED. STATISTICS, <https://nces.ed.gov/ccd/districtsearch/>.

On February 3, 2015, Fordham CLIP received a direct email solicitation from a “Student Event Organizer” with an organization called Weekend Trip soliciting students to go on a two-day trip to Niagara Falls.⁵⁶ The advertisement makes clear that the trip is not through an educational institution, stating that it is “not organized by the student union [or] by the international office.”⁵⁷ Following this statement, the email also appears to discourage the student recipient from contacting school representatives in reference to the Niagara Falls overnight trip, requesting instead that students contact Weekend Trip with any questions.⁵⁸ At the time that Fordham CLIP received this email from Weekend Trip to the research email account, the account had only been used by one student to forward 72 emails the student received from solicitors.

After the initial email Fordham CLIP received from Weekend Trip on February 3, 2015, Fordham CLIP received four additional emails to its research account on the following dates advertising student travel opportunities from Weekend Trip: February 8, 2015, February 15, 2015, March 5, 2015, and April 7, 2015.⁵⁹ After receiving Weekend Trip’s April 7, 2015 solicitation, Fordham CLIP replied to the organization asking how it received the email address. Weekend Trip replied non-responsively that it has “several student email addresses.”⁶⁰ This email exchange is attached as Appendix D.

There are many possibilities as to how Fordham CLIP’s email address was acquired. The solicitor may have utilized an automated tool to spam various combinations of email addresses at “.edu” domains or someone may have eavesdropped on the lone student communicating with Fordham CLIP prior to February 3, 2015 so that it could capture the email address as the recipient of the forward. In any event, Fordham CLIP’s email address was captured as student data after only receiving a single high school student’s email communications. The unsuccessful attempt to determine where the commercial solicitor obtained this data is another example of the opaqueness of the student data marketplace.

⁵⁶ See Appendix C. Email from Gabriel, Student Event Organizer, Weekend Trip, to Fordham CLIP (Feb. 3, 2015, 9:21 p.m. EST).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Emails on file with Fordham CLIP.

⁶⁰ See Appendix D. Email from Gabriel, Weekend Trip, to Fordham CLIP (Apr. 14, 2016, 5:19 p.m. EST).

B. WHO ARE THE DATA BROKERS ADVERTISING STUDENT INFORMATION FOR SALE?

Fordham CLIP could only identify 14 data brokers who conclusively sell or advertise the sale of student information or have done so in the past. Fordham CLIP adopted the FTC definition of data brokers, “companies whose primary business is collecting personal information about consumers from a variety of sources and aggregating, analyzing, and sharing that information . . .”⁶¹ Fordham CLIP was cautious to only identify data brokers that conclusively sell or advertise for sale *student data*, and not merely the personal information of minors or young adults or the contact information of parents or guardians of students.

1. LIST OF STUDENT DATA BROKERS IDENTIFIED

The following data brokers either currently commercialize student information, have gathered, bought or sold student information in the past, or advertise in marketing materials that they sell students’ information:⁶²

- Accurate Leads⁶³
- American Student Marketing⁶⁴

⁶¹ FED. TRADE COMM’N, *supra* note 2, at 3 (2014).

⁶² Fordham CLIP does not claim that this is a comprehensive list of student data brokers. Notwithstanding, operating as a motivated and knowledgeable parent or student might, Fordham CLIP was only able to conclusively identify these student data brokers through its efforts.

⁶³ *High School Kids Mailing Lists*, ACCURATE LEADS, <http://www.accurateleads.com/high-school-student-mailing-lists/> (last visited July 13, 2017). Accurate Leads is a data broker that states it sells lists of information on kids in high school “between the ages of 14 to 18.” *Id.* List buyers can purchase access to the student’s “age with parents [sic] name, student by class year with their name, gender of child, parents age, household income, propensity to buy specific products and services, net worth, lifestyle factors, own vs. rents, length of residence, marital status, ethnic [sic], parents [sic] education level and much more.” *Id.* The company advertises that “[m]arketers can reap the benefits of a lifelong customer by reaching out to high school kids. *Id.* Accurate Leads claims it has around 9,895,179 student names. *Id.*

⁶⁴ *High School Students*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/high-school-students.aspx> (last visited July 13, 2017). American Student Marketing advertises on its website a file of 1 million students’ postal, phone, and email records. *Id.* Buyers can “use the file to search for students and parents by home and email address, academic and artistic

- AmeriList⁶⁵
- ASL Marketing⁶⁶
- Caldwell List Company⁶⁷
- Complete Mailing Lists⁶⁸

interests, athletic interest and involvement, student organizations, honor societies and awards, ethnicities, gender, GPA/SAT/ACT, demographics, geographic information and much more.” *Id.* Previously, American Student Marketing advertised that possible marketing opportunities for its list of high school students included computers and computer accessories, magazines, music subscription services, smart phones, sports memorabilia, student credit cards, and wireless electronics, but it has since removed this content from its website. *High School Students*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/high-school-students.aspx> (as of July 19, 2016).

⁶⁵ *High School Students Database*, AMERILIST, <http://www.amerilist.com/highschoolstudents.php> (last visited July 13, 2017). AmeriList is a data broker that states it sells the information of over five million high school students and their parents. *Id.* AmeriList urges to “[a]ce your next direct marketing campaign by teaming up with AmeriList! Put Americas [sic] best High School Students Mailing List to work for you.” *Id.* AmeriList also states that “41% of teens participate in Black Friday shopping” and “37% of high school students go shopping two or more times per month,” and advertises that its high school student database is the “ideal solution” for credit card, electronic, cell phone, and automotive offers and “many more” commercial offers. *Id.*

⁶⁶ *The Data*, ASL MARKETING, <http://www.aslmarketing.com/data> (last visited July 13, 2017).

ASL Marketing states it is the “the nation’s premier provider of student marketing data, focused on the highly desirable 13-34 year old market” and that the company has been compiling lists since 1972. *About Us*, ASL MARKETING, <http://www.aslmarketing.com/about> (last visited July 13, 2017). ASL Marketing offers to sell over five million student postal records and over two million student email records, and it advertises that (1) “[h]igh school students are a brand conscious and tech savvy group of consumers . . . [who] currently command \$91.1 Billion in the consumer market” (2) “now is the time to start a relationship with these high school students” and (3) that its list of high school students be used for formal wear and limo services, summer camp information, apparel and footwear, smartphones and personal electronics, health and beauty products, and automotive offers and accessories. *High School Student Data Card*, ASL MARKETING, <http://www.aslmarketing.com/docs/DataCardsInfographic-High%20school.pdf> (last visited July 13, 2017).

⁶⁷ *High School Students*, CALDWELL LIST COMPANY, <http://www.caldwell-list.com/studentshighschool/> (last visited July 13, 2017). Caldwell List Company offers a list of eight million high school students and advertises to “[t]arget these young people with huge buying power. It is easy with this high school student list.” *Id.* Caldwell does state that a sample mail piece is required to obtain its high school student list. *Id.*

⁶⁸ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors). Complete Mailing Lists is a data broker that offers to sell data

- DataMasters, DMDatabases (Dirkmark Media Inc.)⁶⁹
- Dunhill International List Co., Inc.⁷⁰
- ERCA⁷¹
- Exact Data⁷²

on over 3.5 million high school students. *Id.* Complete Mailing Lists states: “High School Students are keenly aware of all the latest trends. They are familiar with the newest electronic gadgets and popular fads in today’s culture. These students are social influencers and often play a vital role in purchases made by their peers and families.” *Id.* Complete Mailing Lists advertises that high school students are an “excellent audience” in particular for apparel catalogs and student travel offers. *Id.*

⁶⁹ *Student Direct Mail Lists and Email Marketing Lists*, DATAMASTERS, <http://www.datamasters.org/mailling-lists/student-database-mailling-lists/> (last visited July 13, 2017). DataMasters offers to sell the information of approximately 5.5 million high school students and 1.5 million junior high school students. *Id.* DataMasters states that high school students are excellent prospects for computer games and software, credit card offers, limousine services, prom dress and tuxedo rentals, retail offers, and sporting goods. *Id.* The company advertises that junior high school students “are terrific prospects for hundreds of products and services,” including amusement activities, health- and beauty-related products and services, computer games and software, teen-related magazine subscription offers, music and videos, photography, summer camps, and sporting goods, and that “the list goes on.” *Id.*

⁷⁰ *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017). Dunhill International List Co. offers for sale over three million student records and over two million student email addresses. *Id.* Dunhill emphasizes that students are “great prospects” for clothing offers, teen magazines, book clubs, music clubs, online services, computer software/hardware, telecommunication products, automobiles and accessories, credit cards, fitness, personal care products, and travel offers. *Id.* Dunhill states that a sample mail piece is required in order to obtain its student list. *Id.*

⁷¹ *Frequently Asked Questions*, ERCA, <http://www.studentresearch.org/faqs/> (last visited July 13, 2017). ERCA is a non-profit organization that states it “connects students and parents with educators, counselors, colleges and universities, and professional organizations and associations, all for the benefit of the student.” *Id.* ERCA states that “[s]tudent-specific information is never made available to the general public.” *Id.* However, ERCA also states that, in addition to releasing personally identifiable data to colleges, universities and other post-secondary schools, as well as other educational entities that wish to communicate useful and pertinent information to high school students, ERCA shares information with ASL Marketing, LLC, “a for-profit company which, among other things, is engaged in providing student data to commercial entities that want to contact high school students, including student organizations, and businesses that market consumer products and services of particular interest to them.” *Id.*

⁷² *See, e.g., High School Students Across The US*, EXACT DATA, <https://www.exactdata.com/mailling-lists/high-school-students-across-the-us-mailling-list.html> (last visited July 13, 2017). Exact Data states that “this particular mailing list of High School Students Across The US gives the ability to marketing professionals

- InfoUSA⁷³
- LakeB2B⁷⁴
- NRCCUA⁷⁵
- Scholarships.com⁷⁶

to build new long-term customer relationships” and also indicates that there is an ability to advertise on social media, only to people on the list. *Id.*

⁷³ *Student Mailing List*, INFOUSA, <https://www.infousa.com/product/student-mailing-list/> (last visited July 13, 2017). InfoUSA is a student data broker that sells high school and college student information between the ages of 16 and twenty-five “that have completed an online profile and opted in to receive promotional emails.” *Id.* InfoUSA advertises that you can “create your perfect list of students” and that its student lists are “perfect for businesses that market their products or services to youth” including specifically for clothing retailers, food and beverage companies, entertainment venues, sports and recreation facilities, banks and financial institutions, and credit card companies. *Id.*

⁷⁴ *Students Email List*, LAKE B2B, <https://www.lakeb2b.com/students-email-list> (last visited Aug. 8, 2017). “The Student Email List from Lake B2B is one of the largest, most complete lists of students from preschool to graduate school and beyond. Choose the student list that best suits your marketing needs. Our detailed and exhaustive set of student e-mail database [sic] has names of students between the ages of 2 and 13. This list is updated monthly to ensure accuracy and relevancy. Use this list for your direct marketing campaign if you are selling books, children’s magazines, children’s catalog items including toys and clothing, packaged goods for children, computer software, pageants, photography services, birthday clubs or amusement parks and more.” *Id.* “The Lake B2B student email addresses are ideal for promoting all types of products and services including business services offers, office supplies, travel, books, publications, mail order catalogs, high ticket gifts, financial services, networking, construction equipment, telecommunications, computer hardware and software products, social media offers and more.” *Id.*

⁷⁵ Complaint at 5, In the Matter of the Nat’l Research Ctr. for Coll. & Univ. Admissions, Inc., & Am. Student List, LLC, Corps., 2002 WL 31248527 (2002). NRCCUA markets and distributes surveys to high school students through teachers, guidance counselors, and online. *Id.*; *Privacy Statement*, NRCCUA, <https://www.nrccua.org/cms/About-Us/Privacy-Statement.aspx> (last visited July 19, 2016).

⁷⁶ *About Us*, SCHOLARSHIPS.COM, <https://www.scholarships.com/about-us/> (last visited July 13, 2017). Scholarships.com is a database of scholarships and financial aid resources to which students have access after completing a questionnaire. *Id.* Scholarships.com’s sister company is American Student Marketing, a data broker that specializes in selling student information. *Id.*; AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/> (last visited Mar. 28, 2017). American Student Marketing is the exclusive list broker of Scholarship.com’s data. AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/> (last visited Mar. 28, 2017).

2. OBSERVATIONS

From researching these student data brokers, Fordham CLIP made several observations:

a. TRANSPARENCY OFTEN EXISTS SOLELY BECAUSE OF REGULATOR ENFORCEMENT

First, Fordham CLIP observed that it was relatively easy to identify several of the student data brokers and pursue more information about them only because they were subjects of FTC enforcement proceedings. American Student List and NRCCUA were respondents in an FTC deceptive-trade-practice proceeding in 2002.⁷⁷ Student Marketing Group and ERCA were respondents in an FTC deceptive-trade-practice proceeding in 2003; each settled with the FTC to resolve the allegations.⁷⁸

⁷⁷ Complaint, In the Matter of the Nat'l Research Ctr. for Coll. & Univ. Admissions, Inc., & Am. Student List, LLC, Corps., 2002 WL 31248527 (2002). The FTC alleged that NRCCUA collected personal information from millions of high school students by distributing surveys to high school teachers and guidance counselors. *Id.* at 1. The information collected included a student's "name, address, gender, grade point average, date of birth, academic and occupational interests, athletic and extracurricular interests, racial or ethnic background, and religious affiliation." *Id.* at 1; *Id.* at Exhibit B. The FTC complaint alleges that NRCCUA purported that the data it collected would only be used by colleges and universities to help students and families with the college selection process. *Id.* at 2. The complaint alleges that American Student List (ASL) had access to the NRCCUA information and sold the data to "commercial entities for marketing purposes." *Id.* at 1. Additionally, NRCCUA told teachers and schools that the survey was completely funded by colleges and universities. Press Release, Federal Trade Commission, High School Student Survey Companies Settle FTC Charges (Oct. 2, 2002), <https://www.ftc.gov/news-events/press-releases/2002/10/high-school-student-survey-companies-settle-ftc-charges> (last visited July 17, 2017). However, ASL also substantially funded the survey. *Id.* Pursuant to the FTC consent agreement, NRCCUA can no longer misrepresent how the survey is funded and it cannot collect student information unless it discloses the true nature of how the information will be used. *Id.*

⁷⁸ Complaint, In the Matter of Educ. Research Ctr. of Am., Inc., 2003 WL 221366 (2003). The FTC alleged that ERCA and Student Marketing Group, Inc. (SMG), now ASL Marketing (*see infra* note 83), collected and sold the identifiable information of millions of students to commercial entities for marketing purposes. Press Release, Federal Trade Commission, Data Collected For "Educational Purposes" Also Sold To Marketers Who Targeted Kids (Jan. 29, 2003), <https://www.ftc.gov/news-events/press-releases/2003/01/student-survey-companies-settle-ftc-charges> (last visited July 18, 2017). ERCA distributed a survey to middle and high school teachers and guidance counselors. Complaint at 1, Matter of Educ. Research Ctr. of Am., Inc.,

b. STUDENT DATA BROKERS FREQUENTLY CHANGE NAMES AND HAVE COMPLEX AND FLUID CORPORATE STRUCTURES.

Fordham CLIP also found that data brokers frequently changed names, merged or acquired the assets of other broker firms, or had affiliated corporations. ASL Marketing is one example. In 2012, Alloy Direct Marketing merged with American Student List, changing the name of the company to AlloyASL.⁷⁹ Alloy Direct Marketing was a youth and student marketing service.⁸⁰ Its parent company Alloy, Inc. was a digital media company targeting youth audiences and the company created media and entertainment content.⁸¹ American Student List was a data broker specializing in student information.⁸² In 2013,

2003 WL 221366 (2003). Through the survey, ERCA collected student information, such as “name, address, gender, grade point average, date of birth, academic and occupational interests, athletic and extracurricular interests, religious affiliation, racial and ethnic background, and the name and grade of a sibling.” *Id.* The FTC alleged that SMG funded the cost of the survey and sold the data to commercial entities. *Id.* at 2. The FTC further alleged that the respondent represented that the results of the survey would only be shared with colleges, universities and other education-related services. *Id.* at 3. However, the FTC alleged that the data was mostly used for marketing purposes. *Id.* The consent agreement barred respondents from misrepresenting how information was collected and used and required ERCA and SMG to disclose if it was using information for marketing purposes. Press Release, Federal Trade Commission, Data Collected For “Educational Purposes” Also Sold To Marketers Who Targeted Kids (Jan. 29, 2003), <https://www.ftc.gov/news-events/press-releases/2003/01/student-survey-companies-settle-ftc-charges> (last visited July 18, 2017). It also required the destruction of any personally identifiable information collected from any student under the age of thirteen. *Id.*

⁷⁹ *Accounts and People of Note in the Advertising Industry*, N.Y. TIMES, <http://www.nytimes.com/2012/05/21/business/media/accounts-and-people-of-interest-in-the-advertising-industry.html>; ADAM TANNER, WHAT STAYS IN VEGAS 76 (2014) (American Student List is now a part of ASL Marketing).

⁸⁰ Press Release, Defy Media, American Student List Merges With Alloy Direct Marketing (May 7, 2012), <https://globenewswire.com/news-release/2012/05/07/475718/254877/en/American-Student-List-Merges-With-Alloy-Direct-Marketing.html>.

⁸¹ Press Release, Time Warner, Warner Bros. Television Group Signs Deal to Acquire Alloy Entertainment from Zelnickmedia (June 11, 2012), <http://www.timewarner.com/newsroom/press-releases/2012/06/11/warner-bros-television-group-signs-deal-to-acquire-alloy> (In 2012, Alloy, Inc. consisted of “Alloy Digital, a leading digital media company targeting the 12-34 demographic, Alloy Education, a recognized industry expert in student recruitment solutions for higher education, and Channel One, the premiere television news network for teens.”).

⁸² *Company Overview of American Student List, LLC*, BLOOMBERG, <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=4514234> (last visited July 17, 2017).

AlloyASL acquired Student Marketing Group assets and the organization changed its name to ASL Marketing.⁸³ Student Marketing Group operated as a data broker specializing in student and young adult information.⁸⁴

Exact Data is another example. Exact Data was founded in 2001 as Custom Offers LLC, acquired in 2002 by Mosaic Group and renamed Mosaic Data Solutions, acquired by Organ Worldwide in 2003 and renamed ConsumerBase LLC. It is now named Exact Data.⁸⁵ Since its formation, the entity appears to have also launched and operated numerous websites or mobile apps with varying URLs and names: ListFinder.com (2011), NetPostmaster.com (2011), FastCount.com (2012), ePostmaster.com (2013), DataWidget.com (2015), and ContactUpdater (2016).⁸⁶

C. WHERE DO DATA BROKERS OBTAIN STUDENT DATA?

Fordham CLIP also attempted to determine how data brokers gather student information. Data brokers obtain student information from an array of sources, although it is often unclear to parents and students what these sources of student data are.

1. STUDENT SURVEYS AND QUESTIONNAIRES

Some data brokers acquire student data directly from students through surveys and questionnaires. For example, ERCA collects personal information of students through surveys it administers through the students' schools.⁸⁷ NRCCUA markets and distributes surveys to high school students through teachers, guidance counselors, and

⁸³ *Id.*; Press Release, Defy Media, AlloyASL Marketing Acquires Assets of Student Marketing Group (Mar. 25, 2013), <https://globenewswire.com/news-release/2013/03/25/533389/10026195/en/AlloyASL-Marketing-Acquires-Assets-of-Student-Marketing-Group.html>.

⁸⁴ Complaint at 2, Matter of Educ. Research Ctr. of Am., Inc., 2003 WL 221366 (F.T.C. Jan. 29, 2003).

⁸⁵ *About Us*, EXACT DATA, <https://www.exactdata.com/corporate/about-us/our-story.html> (last visited Feb. 15, 2019).

⁸⁶ *Id.*

⁸⁷ *Frequently Asked Questions*, ERCA, <http://www.studentresearch.org/faqs/> (last visited July 13, 2017) (“Non-personally identifiable information collected through the Survey is compiled in ERCA’s Annual Secondary School Student Survey Report.”).

online.⁸⁸ AmeriList states that it receives its information “from direct responses and internet surveys filled out by students and/or their parents/guardians.”⁸⁹ Complete Mailing Lists⁹⁰ and DataMasters⁹¹ also state that their sources of data include surveys and other direct sources.

2. AFFILIATIONS AND COORDINATION AMONG BROKERS TO COLLECT AND SHARE DATA

Various players in the student data marketplace are affiliated and have coordinated functions. For example, one entity may be the data collection arm for a separate company operating as a student data broker. In addition to releasing personally identifiable data to colleges, universities and other post-secondary schools, as well as other educational entities that wish to communicate information to high school students, ERCA shares information with ASL Marketing, LLC, “a for-profit company which, among other things, is engaged in providing student data to commercial entities that want to contact high school students, including student organizations, and businesses that market consumer products and services of particular interest to them.”⁹² ASL Marketing offers to sell over five million student postal records and over two million student email records, and recommends that its list of high school students be used to market formal wear and limo services,

⁸⁸ *Privacy Statement*, NRCCUA, <https://www.nrccua.org/cms/About-Us/Privacy-Statement.aspx> (last visited July 19, 2016).

⁸⁹ *High School Students Database*, AMERILIST, <http://www.amerilist.com/high-school-students-mailing-list.php> (last visited Feb. 15, 2019).

⁹⁰ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with Fordham CLIP) (stating that its data sources include direct responses and student and family surveys).

⁹¹ *Student Direct Mail Lists and Email Marketing Lists*, DATAMASTERS, <http://www.datamasters.org/mailling-lists/student-database-mailing-lists/> (last visited July 13, 2017) (“The Student Data is compiled through Year Books, Surveys & Multiple Proprietary Sources.”).

⁹² *Frequently Asked Questions*, ERCA, <http://www.studentresearch.org/faqs/> (last visited July 13, 2017). “Our purpose is to facilitate high school students’ exploration of careers, post-secondary education options, and future employment, and to help parents and educators guide students to make informed decisions about their future.” *Id.* “Personally identifiable data provided in response to the survey will be released to Colleges, Universities and other post-secondary schools, as well as other educational entities that wish to communicate useful and pertinent information to high school students. It will also be shared with ASL Marketing, LLC, a for-profit company which, among other things, is engaged in providing student data to commercial entities that want to contact high school students, including student organizations, and businesses that market consumer products and services of particular interest to them.” *Id.*

summer camp information, apparel and footwear, smartphones and personal electronics, health and beauty products, and automotive offers and accessories.⁹³

ERCA maintains that students and parents of students may opt out of these uses,⁹⁴ but it is unclear whether an opt-out request to ERCA would also include a legal obligation on the part of ASL Marketing to cease selling ERCA-sourced information or what, if any, the effect would be of an opt-out on downstream recipients of such data from ASL Marketing. Fordham CLIP also noted that it appears that ASL Marketing (formerly American Student List), which was previously affiliated with NRCCUA,⁹⁵ now receives information from ERCA, and that ASL Marketing acquired assets of the Student Marketing Group, the data recipient in ERCA's 2003 FTC proceeding.⁹⁶ In a previous iteration of its privacy policy, NRCCUA stated that it did not share information with "commercial marketers offering to sell . . . non-education-related products and services."⁹⁷ Fordham CLIP confirmed this statement in a phone call with NRCCUA's sales representative.⁹⁸

Another example of coordination among brokers is that American Student Marketing is the exclusive manager and seller of Scholarships.com data.⁹⁹ This affiliation is apparent from a careful

⁹³ *High School Student Data Card*, ASLMARKETING, <http://www.aslmarketing.com/docs/DataCardsInfographic-High%20school.pdf> (last visited July 13, 2017).

⁹⁴ *Frequently Asked Questions*, ERCA, <http://www.studentresearch.org/faqs/> (last visited July 13, 2017).

⁹⁵ See *supra* note 71.

⁹⁶ See *supra* note 72.

⁹⁷ *Privacy Statement*, NRCCUA, <https://web.archive.org/web/20170823222304/https://www.nrccua.org/cms/About-Us/Privacy-Statement.aspx> (last visited Feb. 15, 2019).

⁹⁸ Telephone call with NRCCUA Sales Representative (June 19, 2016).

⁹⁹ *About Us*, SCHOLARSHIPS.COM, <https://web.archive.org/web/20180602154145/https://www.scholarships.com/about-us/> (last visited Feb. 15, 2019) (As on June 20, 2018, noting that "Scholarships.com was founded in 1998 by Larry Gerber of Highland Park, Illinois and co-created by Dan Walowski and Kevin Ladd of Lake Villa, Illinois and Chicago, Illinois, respectively. The site is still operated in Highland Park by this triumvirate. Also run by the trio are sister companies American Student Marketing and RightStudent. American Student Marketing handles the marketing and advertising responsibilities of Scholarships.com and RightStudent is responsible for partnering Scholarships.com with college and university admissions offices, helping them to recruit the "right student(s)" for their campuses."); AMERICAN STUDENT MARKETING,

review of the Scholarship.com and American Student Marketing websites.¹⁰⁰ However, it may remain a public policy concern whether a student interacting only with Scholarships.com, supplying personal information with the lure of potential scholarship money, would expect these coordinated data practices among affiliate companies and that a separate affiliate entity commercializes this data for both educational and non-educational purposes. Scholarships.com gathers information directly from students in exchange for access to its database of college scholarships and other financial aid information.¹⁰¹ Students are enticed and required to provide a host of sensitive personal data to Scholarships.com in order to have “the opportunity to not only find free money for college and interact with prospective colleges but to be recruited as well.”¹⁰²

American Student Marketing touts that its data exclusively sourced from Scholarships.com is from “consumers providing 100% self-reported information.”¹⁰³ To illustrate the extensiveness of the Scholarships.com survey, Table 1 below provides some of the sensitive

<http://www.americanstudentmarketing.com/> (last visited July 18, 2017) (stating that American Student Marketing “is the exclusive and sole manager of the user file. This means that the rich demographic consumer information you are renting is derived directly from Scholarships.com”).

¹⁰⁰ Thus, this likely avoids a potential deceptive trade practice scenario like the FTC’s enforcement proceeding against American Student List and NRCCUA in 2002. *See supra* note 71; Complaint, In the Matter of the Nat’l Research Ctr. for Coll. & Univ. Admissions, Inc., & Am. Student List, LLC, Corps., & Don M. Munce, Individually & As an Officer of the Nat’l Research Ctr. for Coll. & Univ. Admissions, Inc., 2002 WL 31248527 (2002).

¹⁰¹ *About Us*, SCHOLARSHIPS.COM, <https://www.scholarships.com/about-us/> (last visited July 13, 2017).

¹⁰² *Id.*; *Frequently Asked Questions*, SCHOLARSHIPS.COM, <https://www.scholarships.com/support/frequently-asked-questions/#FAQ1> (last visited July 17, 2017) (“Do I have to register to view the scholarship opportunities in your database? Yes. It is the only way we will be able to deliver the most relevant scholarship opportunities in your direction. Registering allows you to store your search results and revisit the scholarships you wish to pursue when you return. If you don't already have an email address of your own, contact your internet service provider to find out how to create one or visit [sites] such as Gmail.com or Yahoo.com to set up an email account, free of charge.”).

¹⁰³ AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.us/> (last visited Mar. 28, 2017).

data points requested of students by Scholarships.com in order to register to access its scholarship database.¹⁰⁴

Table 1 – Examples of Sensitive Data Points Collected by Scholarships.com

<p>Citizenship Race Ethnicity Religion Disabilities/impairments including:</p> <ul style="list-style-type: none"> ○ ADD/ADHD ○ Allergies ○ ALS (Lou Gehrig’s Disease) ○ Autism/Asperger Syndrome ○ Autoimmune Disorder ○ Bipolar Disorder ○ Cancer related ○ Clinically depressed ○ Clinically overweight ○ Cystic fibrosis ○ Developmental impairment ○ Digestive impairment ○ Disabled parent ○ Down Syndrome ○ Dyslexia ○ Epilepsy ○ Heart Disease ○ Hepatitis ○ HIV positive ○ Learning disability ○ Medical disability ○ Mental impairment ○ Multiple Sclerosis ○ Narcolepsy ○ Parkinson’s Disease ○ Post-traumatic Stress Disorder 	<p>Whether the student is interested in or affiliated with any of the following:</p> <ul style="list-style-type: none"> ○ Adopted/foster child/orphan ○ Affected by Sept. 11 attacks ○ Against the death penalty ○ Anti-bullying advocate/victim of bullying ○ Birth mother placed a child for adoption ○ Cancer patient/survivor (or child of) ○ Child of a single parent ○ Domestic abuse victim ○ Homeless/formerly homeless ○ LGBTQ or Parent LGBTQ ○ Migrant worker/child of migrant worker ○ Refugee/immigrant ○ Undocumented/TPS/DACA
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¹⁰⁴ *Scholarship Search Form*, SCHOLARSHIPS.COM, <https://scholarships.com/scholarship-search> (last visited July 13, 2017). A complete list of the data points solicited in the Scholarships.com Scholarship Search Form as of July 13, 2017 is attached as Appendix E.

<ul style="list-style-type: none">○ Relative with Alzheimer's○ Sickle cell disease○ Spina Bifida○ Tourette Syndrome	
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Arising out of these types of sensitive data points collected by Scholarships.com, the Electronic Privacy Information Center (EPIC) filed a complaint with the FTC in 2013 alleging unfair and deceptive business practices.¹⁰⁵

To research how data collected by Scholarships.com is being used recently, Fordham CLIP conducted an experiment, completing the Scholarships.com questionnaire under the name “Its Private” and listing Fordham CLIP’s contact information. Fordham CLIP then collected the solicitations “Its Private” received through February 7, 2018.¹⁰⁶ Although the vast majority of solicitations received were related to colleges, education funding, or the military,¹⁰⁷ “Its Private” also received two solicitations from a company called Vector inviting students to apply for summer and winter break employment opportunities.¹⁰⁸ Although the letters received from Vector are vague as to the nature of its business or the work required of summer or winter break workers,¹⁰⁹ a review of the company’s website reveals that Vector is the company that sells CUTCO kitchen cutlery.¹¹⁰ Thus, students seeking information on scholarships are also being solicited to sell knives.

3. EDUCATIONAL INSTITUTIONS AS SOURCES OF STUDENT DATA FOR BROKERS

Fordham CLIP attempted also to assess whether educational institutions are sources of student information for data brokers. First, of

¹⁰⁵ Complaint, Request for Investigation, Injunction, and Other Relief, In re Scholarships.com, LLC (Dec. 12, 2013), <https://epic.org/privacy/student/EPIC-FTC-Compl-Scholarships.com.pdf> (last visited Sept. 12, 2017).

¹⁰⁶ Fordham CLIP used the name “Its Private” only on Scholarships.com so that all solicitations received must have derived from the initial contact with Scholarships.com.

¹⁰⁷ Fordham CLIP received 11 solicitations from the following organizations addressed to “Its Private”: Department of the Navy, Marymount Manhattan College, Mercy College, NYSCAS (a division of Touro College), Thomas College, Sallie Mae (relating to education funding), University of Bridgeport, and the University of West Georgia (all on file with Fordham CLIP).

¹⁰⁸ See Appendix F. Letters from The NYC Management Team, Vector, to Its Private (undated) (originals on file with Fordham CLIP).

¹⁰⁹ *Id.*

¹¹⁰ *Who We Are*, VECTOR, <https://vectormarketing.com/who-we-are/> (last visited July 17, 2017).

the six selected school districts,¹¹¹ four¹¹² fully responded to the open public records requests by September 12, 2017, a date beyond the statutory response period imposed by state public record laws. The New York City Department of Education partially responded to Fordham CLIP's public records request, but as of February 7, 2018, had not fully responded to Fordham CLIP's May 6, 2016 request for copies of contracts or agreements providing for the release of student "directory information" during the last twelve months, stating that such request required additional time "due to the volume and complexity of requests [it receives and processes], and to determine whether any records or portions thereof will be subject to redactions permitted under Public Officers Law §87(2)."¹¹³ The other large public school districts Fordham CLIP selected did not require over twenty months to respond to the same request. More concerning from the standpoint of public record transparency is that, as of February 7, 2018, the Boston Public Schools failed to respond to any of Fordham CLIP's requests submitted to the district on May 10, 2016.

To summarize the responses Fordham CLIP did receive from educational institutions, none of the responses to public records requests indicate that schools are giving or selling student information to data brokers or to any other third party for marketing purposes except that the responsive educational institutions indicated that they provide student information to military recruiters,¹¹⁴ community colleges,¹¹⁵ and the National Student Clearinghouse.¹¹⁶ The New York State Education Department (NYSED) also states that it does not currently share

¹¹¹ See *supra* note 41.

¹¹² These were the Chicago Public Schools, Houston Independent School District, Los Angeles Unified School District, and Miami-Dade Schools.

¹¹³ Documents on file with Fordham CLIP.

¹¹⁴ Responsive documents received by Fordham CLIP indicate that student information is provided by the (i) Chicago Public Schools to the Marines and Department of the Navy; (ii) Houston Independent School District to the Marines, Department of the Navy, Air Force, and US Army; (iii) Los Angeles Unified School District to the US Army, Navy, and Marines; and (iv) Miami-Dade Schools to the US Army (documents on file with Fordham CLIP).

¹¹⁵ Responsive documents received by Fordham CLIP indicate that student information was provided by the (i) Los Angeles Unified School District to the LA Community College District – CFAU and Los Angeles ORT College; and (ii) Miami-Dade Schools to Miami Dade College – Wolfson.

¹¹⁶ The Los Angeles Unified School District indicated that it provides student directory information to the National Student Clearinghouse (on file with Fordham CLIP).

students' personally identifiable information as directory information.¹¹⁷

4. OTHER SOURCES

Based upon items students received and provided to Fordham CLIP, it would seem that organizations like the College Board¹¹⁸ and ACT, Inc.¹¹⁹ that administer college entrance exams and other standardized tests would be important sources of data for educational institutions advertising to students.¹²⁰ But our research indicated no link to the data brokering industry from the College Board or ACT, Inc. However, data brokers do gather information from government sources, such as the U.S. Census Bureau, Social Security Administration, and state and local government databases,¹²¹ and from publicly-available sources, such as telephone directories, press reports, blogs and social media.¹²² Data brokers also obtain information from commercial data sources, like retailers,¹²³ and from one another.¹²⁴ The FTC states that, as reselling is so prevalent in this industry, "it may be virtually impossible for a consumer to determine the originator of a particular data element."¹²⁵ Similarly, it is often ambiguous and vague as to what

¹¹⁷ The NYSED replied to Fordham CLIP's public record request: "NYSED does collect student-level data that contains personally identifiable information ("PII") some of which may be categorized as falling within those items of PII listed as directory information under 34 CFR 99.3. However, as a State agency the Department does not currently utilize the mechanism for defining and disclosing certain PII as directory information under 34 CFR 99.37" (on file with Fordham CLIP).

¹¹⁸ COLLEGEBOARD.ORG, <https://www.collegeboard.org/> (last visited Sept. 7, 2017).

¹¹⁹ ACT.ORG, <http://www.act.org/> (last visited Sept. 7, 2017).

¹²⁰ Many of the solicitations students received from colleges and other educational institutions contained explicit statements like "I received your contact information from ACT" (documents on file with Fordham CLIP).

¹²¹ FED. TRADE COMM'N, *supra* note 2, at 11-12 (2014).

¹²² *Id.* at 13; *The Data*, ASL MARKETING, <http://www.aslmarketing.com/data> (last visited July 13, 2017) ("Our national database of 175 million high school students, college students, young adults and parents is collected from some of the following sources: proprietary survey distributed in high schools, educational websites, public record information and college directories.").

¹²³ FED. TRADE COMM'N, *supra* note 2, at 13 (2014).

¹²⁴ *Id.* at 14; *Student Direct Mail Lists and Email Marketing Lists*, DATAMASTERS, <http://www.datamasters.org/mailling-lists/student-database-mailling-lists/> (last visited July 13, 2017) ("Our strong relationship with all major Data Compilers in the Direct Marketing Industry guarantees reputable, high quality data for your Direct Marketing Project.").

¹²⁵ FED. TRADE COMM'N, *supra* note 2, at 14 (2014).

the sources of data are¹²⁶ and sources of underlying data are sometimes stated in non-exhaustive lists.¹²⁷

Demonstrating a lack of transparency as to data sources in the commercial student data marketplace, Fordham CLIP attempted to contact the senders of the twenty advertisements received by New York, New Jersey, and Vermont students which were unrelated to colleges, education funding, or the military.¹²⁸ On June 21, 2016, Fordham CLIP asked each solicitor where it obtained the particular student's contact information. Only one of the twenty commercial solicitors responded to this request. The American Red Cross responded and stated that it obtained the contact information directly from the student as a prior blood donor, it "never shares, sells, rents or otherwise distributes" contact, demographic, or other information to any third party, and its "volunteers, employees, and other individuals who have access to Red

¹²⁶ See, e.g., *Consumer Lists*, EXACT DATA, <https://www.exactdata.com/consumer-mailing-lists.html> (last visited July 18, 201) ("Exact Data sources consumer data from a national database with approximately 242 million names, postal addresses, and telephone numbers, with approximately 700 selects, originating from over 2,000 different sources").

¹²⁷ See, e.g., *The Data*, ASLMARKETING, <http://www.aslmarketing.com/data> (last visited July 13, 2017) ("Our national database of 175 million high school students, college students, young adults and parents is collected from some of the following sources: proprietary survey distributed in high schools, educational websites, public record information and college directories."); *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List, <https://completemailinglists.com/node/3082> (on file with authors) ("The data is aggregated from multiple proprietary sources that fall into categories such as student and family surveys, publisher data, student directories, club memberships and more."); *Student Direct Mail Lists and Email Marketing Lists*, DATAMASTERS, <http://www.datamasters.org/mailling-lists/student-database-mailing-lists/> (last visited July 13, 2017) ("The Student Data is compiled through Year Books, Surveys & and Multiple Proprietary Sources"); *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017) ("This database is compiled from numerous educational sources.").

¹²⁸ See *supra* Part IV(A) (These commercial solicitors were: AIG, ATW Lacrosse Camps, the American Red Cross, the Bernie Sanders campaign, Respecttomajorthings.com (credit card solicitation), Dental Implants, Dissolve Toenail Fungus, FreedomVoice, Grand Valley State University Lacrosse, Internet Income Shortcuts, the National Student Leadership Conference, New York Aquarium, Optima Tax Relief, Rosetta Stone, Under Armour, TurboTax, the Wildlife Conservation Society, and Zippy Loan).

Cross information or perform work on behalf of the Red Cross are required to sign and uphold a confidentiality agreement.”¹²⁹

In summary, data brokers obtain and aggregate student information from a variety of sources, but there is often a lack of transparency and detail as to what these specific sources are.

D. WHAT STUDENT DATA DO BROKERS OFFER FOR SALE AND HOW DO THEY PACKAGE IT?

Taking the list of student data brokers Fordham CLIP was able to identify, Fordham CLIP sought to determine what data about students these brokers offer for sale and how they package student data in the commercial marketplace. There are numerous student lists and selects¹³⁰ for sale for purposes wholly unrelated to education or military service. Also, in addition to basic student information like name, birth date, and zip code, data brokers advertise questionable lists of students, and debatable selects within student lists, profiling students on the basis of ethnicity, religion, economic factors, and even gawkiness.¹³¹

Table 2 below provides examples of specialized lists and available selects advertised for sale by the student data brokers Fordham CLIP was able to identify. These lists and selects illustrate commercial

¹²⁹ Email from American Red Cross to Fordham CLIP (July 12, 2016, 12:59 p.m. EST) (on file with Fordham CLIP).

¹³⁰ A select is “an attribute that can be used to filter a subset of a mailing list. Each select offers a domain of one or more discrete values or a range of continuous values. State is an example of a select with 50 discrete values (the 50 states of the United States). Age is an example of [a] select with a range of continuous values. Selects are combined together to form the selection criteria for extracting the subset of the mailing list that meets the needs of the mailer. For example, you might want to get the subset of a mailing list where the State is New Hampshire and Age is in the range of 25 to 55.” *Resources*, NEXTMARK, <https://www.nextmark.com/glossary-term/select/> (last visited Aug. 2, 2017). Brokers advertise the availability of certain selects. *See, e.g., Consumer Lists*, EXACT DATA, <https://www.exactdata.com/consumer-mailing-lists.html> (last visited July 18, 2017); *High School Students*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/high-school-students.aspx> (last visited July 18, 2017). Selects can be combined to create a subset of a list of people that have similar characteristics from which it is possible to infer behavior and draw predictive conclusions. FED. TRADE COMM’N, DATA BROKERS: A CALL FOR TRANSPARENCY AND ACCOUNTABILITY 3 (2014).

¹³¹ *See infra* Table 2 and notes 132-166.

uses of student data unrelated to education or military recruitment and profiling based on student ethnicity, religion, wealth, and personality traits.

Table 2 - Specialized Student Lists for Sale or Advertised Selects Within Student Lists

Name of List or Type of Select	Brokers
African-American Students (list)	Exact Data ¹³²
Asian Students in New York by Education Level (list)	Exact Data ¹³³
Brand name Backpacks - High School Students From Affluent Neighborhoods (list)	Exact Data ¹³⁴
Buyer activity or recency (select)	Complete Mailing Lists, ¹³⁵ Dunhill International List Co., Inc. ¹³⁶
Demographics (select)	American Student Marketing, ¹³⁷ Complete Mailing Lists ¹³⁸

¹³² *African American Students*, EXACT DATA, <https://www.exactdata.com/mailling-lists/african-american-students-mailing-list.html> (last visited July 17, 2017).

¹³³ *Asian Students in New York by Education Level*, <https://www.exactdata.com/mailling-lists/asian-students-in-new-york-by-education-level-mailing-list.html> (last visited July 17, 2017).

¹³⁴ *Brand name Backpacks - High School Students From Affluent Neighborhoods*, EXACT DATA, <https://www.exactdata.com/mailling-lists/brand-name-backpacks-high-school-students-from-affluent-neighborhoods-mailing-list.html> (last visited July 18, 2017).

¹³⁵ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors).

¹³⁶ *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017).

¹³⁷ *High School Students*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/high-school-students.aspx> (last visited July 13, 2017).

¹³⁸ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors).

Ethnicity (select)	Accurate Leads, ¹³⁹ American Student Marketing, ¹⁴⁰ AmeriList, ¹⁴¹ ASL Marketing, ¹⁴² Caldwell List Company, ¹⁴³ Complete Mailings Lists, ¹⁴⁴ Dunhill International List Co., Inc. ¹⁴⁵
Hobbies (select)	ASL Marketing, ¹⁴⁶ InfoUSA ¹⁴⁷
Home School Oriented Christian Families (list)	Exact Data ¹⁴⁸
Household income (select)	Accurate Leads, ¹⁴⁹ DataMasters, ¹⁵⁰ Dunhill International List Co., Inc. ¹⁵¹
Income (select)	Complete Mailing Lists ¹⁵²

¹³⁹ *High School Kids Mailing Lists*, ACCURATE LEADS, <http://www.accurateleads.com/high-school-student-mailing-lists/> (last visited July 13, 2017).

¹⁴⁰ *High School Students*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/high-school-students.aspx> (last visited July 13, 2017).

¹⁴¹ *High School Students Database*, AMERILIST, <http://www.amerilist.com/highschoolstudents.php> (last visited July 13, 2017).

¹⁴² *High School Student Data Card*, ASLMARKETING, <http://www.aslmarketing.com/docs/DataCardsInfographic-High%20school.pdf> (last visited July 13, 2017).

¹⁴³ *High School Students*, CALDWELL LIST COMPANY, <http://www.caldwell-list.com/studentshighschool/> (last visited July 13, 2017).

¹⁴⁴ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors).

¹⁴⁵ *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017).

¹⁴⁶ *High School Student Data Card*, ASLMARKETING, <http://www.aslmarketing.com/docs/DataCardsInfographic-High%20school.pdf> (last visited July 13, 2017).

¹⁴⁷ *Student Mailing List*, INFOUSA, <https://www.infousa.com/product/student-mailing-list/> (last visited July 13, 2017).

¹⁴⁸ *Home School Oriented Christian Families*, EXACT DATA, <https://www.exactdata.com/mailling-lists/home-school-oriented-christian-families-mailing-list.html> (last visited July 17, 2017).

¹⁴⁹ *High School Kids Mailing Lists*, ACCURATE LEADS, <http://www.accurateleads.com/high-school-student-mailing-lists/> (last visited July 13, 2017).

¹⁵⁰ *Student Direct Mail Lists and Email Marketing Lists*, DATAMASTERS, <http://www.datamasters.org/mailling-lists/student-database-mailing-lists/> (last visited July 13, 2017).

¹⁵¹ *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017).

¹⁵² *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors).

Jewish Households With Children Nearing High School Graduation (list)	Exact Data ¹⁵³
Jewish Students in New York by Education Level (list)	Exact Data ¹⁵⁴
Length of residence (select)	Accurate Leads ¹⁵⁵
Lifestyle (select)	Accurate Leads, ¹⁵⁶ Complete Mailing Lists ¹⁵⁷
Net worth (select)	Accurate Leads ¹⁵⁸
Parent education level (select)	Accurate Leads ¹⁵⁹
Propensity to buy specific products and services (select)	Accurate Leads ¹⁶⁰
Religious affiliation (select)	InfoUSA ¹⁶¹
Rich Kids of America	Exact Data ¹⁶²

¹⁵³ *Jewish Households With Children Nearing High School Graduation*, EXACT DATA, <https://www.exactdata.com/mailling-lists/Jewish-Households-With-Children-Nearing-High-School-Graduation-mailling-list.html> (last visited July 17, 2017).

¹⁵⁴ *Jewish Students in New York by Education Level*, EXACT DATA, <https://www.exactdata.com/mailling-lists/Jewish-Students-in-New-York-by-Education-Level-mailling-list.html> (July 17, 2017).

¹⁵⁵ *High School Kids Mailing Lists*, ACCURATE LEADS, <http://www.accurateleads.com/high-school-student-mailling-lists/> (last visited July 13, 2017).

¹⁵⁶ *Id.*

¹⁵⁷ *Complete High School Students*, COMPLETE MAILING LISTS, Next Mark List (on file with authors).

¹⁵⁸ *High School Kids Mailing Lists*, ACCURATE LEADS, <http://www.accurateleads.com/high-school-student-mailling-lists/> (last visited July 13, 2017).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Student Mailing List*, INFOUSA, <https://www.infousa.com/product/student-mailling-list/> (last visited July 13, 2017).

¹⁶² *Rich Kids of America Mailing List*, MAILING LIST FINDER, <https://lists.nextmark.com/market;jsessionid=D8344F0872CF5F1E71A9945EBFB88813?page=order/online/datacard&id=298616> (last visited July 17, 2017). This list was posted to NextMark.com by Exact Data. (Email from support@nextmark.com to Fordham CLIP (July 13, 2017, 4:43 p.m. EST) (on file with Fordham CLIP).

Teen's Prom Garter Sets	Exact Data ¹⁶³
Telephones	Caldwell List Company, ¹⁶⁴ Dunhill International List Co., Inc. ¹⁶⁵
The Awkward Years - High School Students	Exact Data ¹⁶⁶

These types of student lists and selects are available for purchase in the commercial marketplace. However, Fordham CLIP could not easily determine why particular students were targeted for non-education and non-military advertisements they received. Only the American Red Cross responded that it marketed to a student as a past donor and as a potential future donor to “facilitate special blood program matching,” which could be based on the student’s blood type, ethnicity, gender, and “test result histories like iron level.”¹⁶⁷ If advertisers are soliciting students for products and services based upon the specific lists in Table 2 above, then this connection is not transparent. Overall, Fordham CLIP was unsuccessful in learning what characteristics or filters were associated with the students and which prompted marketing materials to be sent to particular individuals.

V. RECOMMENDATIONS

Fordham CLIP spent several years researching and seeking information on if and how student data is being commercially obtained, sold, and used. From the perspective of the data subject, this is an

¹⁶³ *Teen's Prom Garter Sets Mailing List*, MAILING LIST FINDER, <https://lists.nextmark.com/market?page=order/online/datacard&id=102021> (last visited July 17, 2017). This list was posted to NextMark.com by Exact Data. Email from support@nextmark.com to Fordham CLIP (July 13, 2017, 4:44 p.m. EST) (on file with Fordham CLIP).

¹⁶⁴ *High School Students*, CALDWELL LIST COMPANY, <http://www.caldwell-list.com/studentshighschool/> (last visited July 13, 2017).

¹⁶⁵ *College Bound High School Students*, DUNHILL INTERNATIONAL LIST CO., <http://www.dunhills.com/datacardcentral/PDF/1717.pdf> (last visited July 13, 2017).

¹⁶⁶ *The Awkward Years - High School Students*, EXACT DATA, <https://www.exactdata.com/mailling-lists/the-awkward-years-high-school-students-mailling-list.html> (last visited July 17, 2017).

¹⁶⁷ Email from American Red Cross to Fordham CLIP (July 12, 2016, 12:59 p.m. EST) (on file with Fordham CLIP).

opaque market. A profitable ecosystem for commercial student data exists, but interested, driven, and savvy parents and students cannot find out much information about it. An industrious review of publicly-available sources, public records requests to educational institutions, and attempts at reverse-engineering advertisements received by students reveal only a limited picture of the commercial marketplace for student information. With a substantial amount of effort, parents and students can only identify a small number of brokers selling student information. Moreover, student data seems to be obtained, accumulated, and exchanged by variable corporate structures. Affiliate relationships also exist among brokers to collect and monetize student data which, despite written disclosures, may be latent and unexpected to the average parent or student.

Through its research, Fordham CLIP found that data brokers gather student information from a wide array of sources, but that it is difficult for someone to discover how an advertiser soliciting a particular student obtained that individual student's information. Educational institutions do not appear to be sources of student information for data brokers and are generally responsive to requests for information regarding recipients and sources of student data, but data sources for private-sector marketers and data brokers do not appear to be at all transparent. It is difficult for parents and students to obtain specificity on data sources with an email, a phone call, or an internet search. From the perspective of parents and students, there is no data trail. Likewise, parents and students are generally unable to know how and why certain student lists were compiled or the basis for designating a student as associated with a particular attribute. 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.

Based upon its research and the large gaps in law and regulation of the commercial marketplace for student data, Fordham CLIP recommends as follows:

1. MARKETPLACE TRANSPARENCY.

The commercial marketplace for student information should not be a subterranean 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) from where the data for

student lists and selects derives. For consumer reporting agencies, the FCRA requires this type of transparency and access.¹⁶⁸ A model like the FCRA should apply to the compilation, sale, and use of student data once outside of schools and FERPA protections. In this study, the American Red Cross, and educational institutions generally, demonstrated the type of transparency and responsiveness that should commonly exist for parents and students. A parent or student should be able to know who is selling student information, how student information is being used and sold, and the sources of the data. If data brokers are selling information on students based on stereotypes, this should be transparent and subject to parental and public scrutiny. An FCRA model would include: a) a notice of the data brokers' collection of student information either individually or by public notice; b) a right of access by parents to student information held by data brokers; c) a right to correction of inaccurate information; and d) a requirement for data brokers to disclose to parents the recipients of their child's information.

2. ACCURACY.

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.

3. OPTING-OUT.

Parents and emancipated students should be able to opt out of uses of student data for commercial purposes unrelated to education or military recruitment.

4. DATA COLLECTION FROM EDUCATIONAL INSTITUTIONS.

School officials are possibly not aware of the extent of their role in the commercial student data industry. Schools, teachers, and guidance counselors are being used for commercial and marketing purposes as data gatherers in administering school surveys.¹⁶⁹ It is not clear whether

¹⁶⁸ See *supra* note 31.

¹⁶⁹ See *supra* Part IV(C)(1).

these surveys are distributed with formal school district approval, and it is outside the scope of this study whether these surveys comply with the Protection of Pupil Rights Amendment (PPRA).¹⁷⁰ In the past, school surveys have included instruction pages or cover letters urging schools to administer the survey and stating that it may be used for evaluating financial aid and scholarship opportunities for students.¹⁷¹ Thus, teachers and guidance counselors might believe they are actually harming students if they refuse to hand out the surveys. 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 PPRA.

¹⁷⁰ 20 U.S.C. § 1232(h) (2012).

¹⁷¹ *See, e.g.*, Complaint at Exhibit B, Matter of Educ. Research Ctr. of Am., Inc., 2003 WL 221366 (2003); Complaint at Exhibit E, In the Matter of the Nat'l Research Ctr. for Coll. & Univ. Admissions, Inc., & Am. Student List, LLC, Corps., & Don M. Munce, Individually & As an Officer of the Nat'l Research Ctr. for Coll. & Univ. Admissions, Inc., 2002 WL 31248527 (2002).

VI. APPENDICES

APPENDIX A: RESEARCH METHODOLOGY AND SEARCH APPROACH - INTERNET SOURCES AND LEGAL SEARCH ENGINES

To conduct the internet and legal search engine review, Fordham CLIP used the approach and search terms described in this Appendix A. This is not a comprehensive search of the entire internet, but we maintain that it is reasonably comprehensive to identify the relevant information a knowledgeable and motivated student or parent would find if searching for information regarding data brokers selling U.S. student information.

1. SELECTION OF SEARCH TERMS

First, Fordham CLIP selected a number of broad search terms to use across search tools. The two-layer composite search strategy was that key words (e.g. data broker) would be combined with more specific key words (e.g. “student data,” “student lists”). As a first layer, two terms that related to data brokers were chosen: “data broker” and “data marketer.”¹⁷² As a second layer, each of the first layer terms was then

¹⁷² The terms “data broker” and “data marketer” were chosen for several reasons. First, the FTC defines data brokers as “companies whose primary business is collecting personal information about consumers from a variety of sources and aggregating, analyzing, and sharing that information, or information derived from it, for purposes such as marketing products, verifying an individual’s identity, or detecting fraud.” FED. TRADE COMM’N, DATA BROKERS: A CALL FOR TRANSPARENCY AND ACCOUNTABILITY 3 (2014). Brokers gather data, either by collecting it themselves or buying it from another source and analyze it by using personal information to make inferences on consumers. FED. TRADE COMM’N, DATA BROKERS: A CALL FOR TRANSPARENCY AND ACCOUNTABILITY 3 (2014); COMMITTEE ON COM., SCI., AND TRANSP., A REVIEW OF THE DATA BROKER INDUSTRY: COLLECTION, USE, AND SALE OF CONSUMER DATA FOR MARKETING PURPOSES 12 (2013). Brokers then sell these inferences, or the raw data points, to third parties, like corporations, universities, or other data brokers. FED. TRADE COMM’N, DATA BROKERS: A CALL FOR TRANSPARENCY AND ACCOUNTABILITY 3 (2014); COMMITTEE ON COM., SCI., AND

combined with a second search term related to students and the sale of student information. The search approach and use of first and second layer search terms are best visualized as a matrix. See Table A below. Searches were conducted using the combination of terms reflected by each of the boxes in the matrix.

TABLE A		
	“Data broker”	“Data marketer”
Student		
“Student data”		
Education		
“High school”		
“Student list”		
“Student emails”		
Buy student selects		

TRANSP., A REVIEW OF THE DATA BROKER INDUSTRY: COLLECTION, USE, AND SALE OF CONSUMER DATA FOR MARKETING PURPOSES 12 (2013). However, data brokers sometimes regard the term “data broker” as a negative one because of a stigma associated with it and because the term might not cover the full range of services a company offers. *See, e.g.,* Steve Kroft, *The Data Brokers: Selling your personal information*, 60 MINUTES (Aug. 24, 2014) (Bryan Kennedy, chairman and CEO of Epsilon, says he “doesn’t like the term ‘data broker,’ and says Epsilon is a marketing firm that uses data.”). Fordham CLIP examined the websites of several data brokers that specialized in the sale of student information and found data brokers generally did not refer to themselves as data brokers. For example, one data broker has referred to itself—at least until August 2017—as a “multi-channel direct marketing services” firm (*About Us*, EXACT DATA, <https://web.archive.org/web/20171113190317/https://www.exactdata.com/about-us.html> (last visited Feb. 14, 2019) (“Exact Data provides multi-channel direct marketing services with a specialty in postal, email, and telephone solutions, and targeted social media ad placement”). Another company describes itself as a “marketing data and campaign management” firm (*About Us*, AMERICAN STUDENT MARKETING, <http://www.americanstudentmarketing.com/about.aspx> (last visited July 18, 2017) (“ASM is a leading provider of permission-based marketing data and campaign management”). Therefore, Fordham CLIP selected both “data broker” and “data marketer” as search terms.

2. DATE FILTER

Additionally, a date filter was selected for two reasons. First, searches were generally limited to results January 1, 2002 to March 31, 2017 in order to have meaningful results capturing current news and reports. Second, a significant increase in public awareness of data brokers and the sale of information took place after FTC investigations and other major inquiries occurring around 2002.

3. DATABASES

The internet review was conducted through the following search engines and databases: google.com, Westlaw, Bloomberg, Direct Marketing News, World Privacy Forum, and FTC.gov. Fordham CLIP used the search terms above in Westlaw and searched relevant cases, statutes, secondary sources and briefs. The search produced the FTC proceedings described in Part IV(B)(2)(b); however, no federal or state court cases were located that directly addressed data brokers and student information.

APPENDIX B: REQUEST FOR PUBLIC DOCUMENTS – BOSTON PUBLIC SCHOOLS

Request for Public Documents

Joel Reidenberg <jreidenberg@fordham.edu>
Reply-To: jreidenberg@law.fordham.edu
To: ocaseo@bostonpublicschools.org

Tue, May 10, 2016 at 10:19 AM

Office of Legal Advisor

ATTN: Alissa Ocasio

Boston Public School

26 Court Street

Boston, MA 02108

Dear Ms. Ocasio,

This is a request under the Massachusetts Public Records Law (M.G.L. Chapter 66, Section 10) for the following information:

1. A copy of the District's most recent annual notice to parents designating the types of student personal information classified as "directory information" by the District pursuant to FERPA, 20 U.S.C. §1232g.
2. Copies of all requests made during the last 12 months for student "directory information" that resulted in the release of information on more than 100 students.
3. Copies of all contracts or agreements providing for the release during the last 12 months of student "directory information."
4. A copy of the page of the District's current and prior fiscal year budget showing any revenue received by the District for the release or sale of student "directory information."

I agree to pay any fees for searching or copying these records provided they are less than \$25. If the cost will exceed \$25.00, please inform me prior to incurring the charges. In either case, I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest. The requested information is in the public interest because it will be used for an academic research study (as described in the attached) and will help educational leaders and policy-makers understand how student information is disseminated beyond schools.

Please send all responsive documents to jreidenberg@law.fordham.edu or to the address below.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you.

Sincerely,

Joel R. Reidenberg

<<...>>

Joel R. Reidenberg

Stanley D. and Nikki Waxberg Chair and Professor of Law

Founding Academic Director, Center on Law and Information Policy

APPENDIX C: FEBRUARY 3, 2015 EMAIL SOLICITATION RECEIVED FROM WEEKEND TRIP

9/1/2017

Fordham University Mail - 2 day tour to Niagara Falls between 14th and 15th February 2015 (NY)



FordhamLaw FLSClip <flsclip@fordham.edu>

2 day tour to Niagara Falls between 14th and 15th February 2015 (NY)

1 message

Weekend Trip <info@weekendtripus.com>
Reply-To: Weekend Trip <info@weekendtripus.com>
To: flsclip@fordham.edu

Tue, Feb 3, 2015 at 9:21 PM

Hi,

We are alumni and current students who love traveling, and we have just come up with the idea to organize the following trip. Please, have a quick look, you might be interested.

• 2 day tour to Niagara Falls between 14th and 15th February 2015

For more details please, see the following link

Please note this trip is not organized by the student union, neither by the international office, so if you have any questions do not hesitate to contact me.

If you see "sold out" but you would like to come to the trip, please send me a request for ticket and we might sort it out. If you are not available this weekend, but you would like to come, please let me know and we might organize the same trip another time.

Regards,

Gabriel

Student Event Organizer

[Click here to unsubscribe](#) and [here to subscribe](#) from events by *Weekend Trip*.

<https://mail.google.com/mail/u/1/?ui=2&ik=84a4b31deb&jsver=E1MVGX3tyASk.en.&view=pt&search=inbox&th=14b526412a88f297&siml=14b526412a8...> 1/1

APPENDIX D: APRIL 14, 2016 EMAIL RESPONSE FROM WEEKEND TRIP

9/1/2017

Fordham University Mail - Trip to Boston on 11th of April 2015 (NY)



FordhamLaw FLSCLIP <flsclip@fordham.edu>

Trip to Boston on 11th of April 2015 (NY)

Weekend Trip <weekendtripus@gmail.com>
 To: FordhamLaw FLSCLIP <flsclip@fordham.edu>

Thu, Apr 14, 2016 at 5:19 PM

Hi,

Thank you for your interest in our trip.

We are alumni and current international students and we have several student email addresses. We would like to invite students for these trips. The main purpose of this trip is to find new friends and visit nice destinations in the US.

Regards,

Gabriel

On Thu, Apr 14, 2016 at 9:35 PM, FordhamLaw FLSCLIP <flsclip@fordham.edu> wrote:

Thank you for your email. Could you please let me know how you received my email address to send me the message below?

On Tue, Apr 7, 2015 at 7:19 AM, Weekend Trip <info@weekendtripus.com> wrote:

Hi,

There are still available seats on the coach for the trip this weekend.

For more details please, see the following link

Please note this trip is not organized by the student union, neither by the international office, so if you have any questions do not hesitate to contact me.

If you see "sold out" but you would like to come to the trip, please send me a request for ticket and we might sort it out. If you are not available this weekend, but you would like to come, please let me know and we might organize the same trip another time.

Regards,

Gabriel

Student Event Organizer

[Click here to unsubscribe](#) and [here to subscribe](#) from events by *Weekend Trip*.

<https://mail.google.com/mail/u/1/?ui=2&ik=84a4b31deb&jsver=E1MGX3tyASK.en.&view=pt&msg=15416a55b3809993&search=all&dsqt=1&siml=1541...> 1/2

APPENDIX E: DATA POINTS COLLECTED IN SCHOLARSHIPS.COM QUESTIONNAIRE

<ul style="list-style-type: none"> • Current grade in school • Birthday • Zip code • Email address • Colleges interested in attending • Name • Gender • Grade point average • Student's permanent home address • Phone number • Student's citizenship • Race • Ethnicity • Religion • Disabilities/Impairments including: <ul style="list-style-type: none"> ○ ADD/ADHD ○ Allergies ○ ALS (Lou Gehrig's Disease) ○ Any impairment ○ Arthritis/Rheumatism ○ Autism/Asperger Syndrome ○ Autoimmune Disorder ○ Bipolar Disorder ○ Cancer related ○ Clinically depressed ○ Clinically overweight ○ Cystic fibrosis ○ Developmental impairment ○ Diabetes ○ Digestive impairment ○ Disabled parent ○ Down Syndrome ○ Dyslexia ○ Epilepsy ○ Glycogen Storage Disease ○ Hearing impaired parent ○ Hearing impairment ○ Heart Disease 	<ul style="list-style-type: none"> ○ Hemophilia ○ Hepatitis ○ HIV positive ○ Kidney related impairment ○ Learning disability ○ Medical disability ○ Mental impairment ○ Multiple Sclerosis ○ Narcolepsy ○ Parkinson's disease ○ Phenylketonuria (PKU) ○ Physical impairment ○ Post-traumatic Stress Disorder ○ Primary immune deficiency ○ Relative with Alzheimer's ○ Respiratory impairment ○ Sickle cell disease ○ Spina Bifida ○ Tourette Syndrome ○ Visual impairment ○ Wheelchair user/mobility challenged • SAT score • PSAT score • ACT score • GED score • Class rank • High school • Intended/ current academic major(s) • Extracurricular activities: including arts, music, theater and athletics • Interest or affiliation with the military • Whether the student or parent is employed with a list of 30 companies (like Burger King, Walt Disney, Amazon, etc.) 	<ul style="list-style-type: none"> • Whether the student is interested in or affiliated with any of the following: <ul style="list-style-type: none"> ○ Adopted/foster child/ orphan ○ Affected by Sept. 11 attacks ○ Against the death penalty ○ Animal/pet care experience ○ Anti-bullying advocate/victim of bullying ○ Bilingual ○ Birth mother placed a child for adoption ○ Cancer patient/survivor (or child of) ○ Child of a single parent ○ Domestic abuse victim ○ Duck calling ○ Environmental activism ○ Farmer ○ First in family college student ○ Homeless/formerly homeless ○ Left-handed people ○ LGBTQ or Parent LGBTQ ○ Migrant worker/child of migrant worker ○ Multiple birth sibling (or parent of) ○ Refugee/immigrant ○ Returning/continuing student ○ Single parent ○ Social action ○ Student with dependent children ○ Study abroad ○ Tall people ○ Transfer students ○ Transplant candidate/recipient ○ Undocumented/TPS/ DACA ○ Vegetarian/vegan • Honors Organizations • Student Organizations (i.e. Girls Scouts, etc.)
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APPENDIX F: SOLICITATIONS RECEIVED FROM VECTOR



Its, we currently have
immediate openings in your area.
 Please apply online at:
ItsPrivate100.VectorApply.com



Its Private
 150 W 62nd St # 7-122
 New York NY 10023-7407

Dear Its,

We are writing to alert you to an important opportunity for students in your area.

Due to our company's continued growth and expansion, we have immediate openings for summer work.

The starting pay is excellent - and the best part is you don't need any experience. We'll train you and teach you everything you need to succeed.

But we must hear from you within the next 5 days if you are interested.

Vector is an international company established in 1981. We are currently expanding locally and have summer customer sales and service positions available. These positions offer you:

- Full and part time openings with flexible schedules
- \$17.50 base-appt.
- Valuable resumé experience
- May continue during school in the fall
- Conditions apply
- All ages 17+
- Opportunity to advance

We are currently filling openings in Manhattan and the surrounding areas. You may apply regardless of your major, current work schedule, class schedule or previous work experience.

We look forward to meeting you and explaining the details of the position. To request an interview, please apply online at ItsPrivate100.VectorApply.com.

Sincerely,

The NYC Management Team

P.S. Remember: you don't need any experience - but you do need to apply soon.

Apply online at:
ItsPrivate100.VectorApply.com

UN6AU6



New York City District Headquarters



Its Private
150 W 62nd St # 7-122
New York NY 10023-7407

Dear Its,

We are writing to notify you about an important **winter break work** opportunity for students in your area. In addition to taking time off from school, we have found that many students enjoy earning extra income and gaining experience over their semester break.

Our starting pay is **\$17.50 base-appt**. We work with students who have breaks ranging from four days to six weeks and you do not need experience to work with us. However, you must be 17 years or older and some conditions do apply.

Vector is an international company established in 1981. We work with thousands of students each year in the summer and during the school year. Our current winter break openings involve customer sales and service. These openings offer you several advantages.

<p>Great pay: \$17.50 base-appt 1-6 week work program available Flexible schedules around your other winter break activities Can secure spring or summer positions now Opportunities to advance Valuable resumé experience for all majors</p>

Positions are being filled in Queens, the Bronx, and Manhattan. We encourage you to apply regardless of the length of your winter break, your current work schedule or previous work experience.

Apply online at ItsPrivate101.VectorApply.com. We look forward to meeting you and explaining the details of the positions.

Sincerely,

The NYC Management Team

P.S. Remember, you don't need experience, but we do ask that you apply quickly to help us with placement of people. Apply online at ItsPrivate101.VectorApply.com.

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