



# PRIVACY JOURNAL

P.O. Box 15300  
Washington, D.C. 20003  
(202) 547-2865

an independent monthly on privacy in a computer age

---

ROBERT ELLIS SMITH  
PUBLISHER

TESTIMONY BY ROBERT ELLIS SMITH\*  
PUBLISHER, PRIVACY JOURNAL

Before the Subcommittee on Consumer Affairs and Coinage  
Committee on Banking, Finance and Urban Affairs  
House of Representatives  
on the Fair Credit Reporting Act  
September 13, 1989

The 1980s have been the decade of unanticipated changes and startling anti-competitive trends in the credit-reporting industry, just as the 1970s revealed frightening inaccuracies in the information disseminated by the industry.

1. Concentration in the Industry At the beginning of this decade there were five major nationwide credit bureaus. Now there are just three -- TRW Credit Data of Southern California (which this year acquired fifth-ranked Chilton Corp.); CBI Inc., owned by Equifax Inc. of Atlanta, Ga. (which purchased fourth-ranked Associated Credit Services of Houston); and Trans Union Corp., based in Chicago. The Big Three rarely compete in a specific region of the country. Consumers have no choice in which credit bureau will compile a report on them. There are no competitive motivations for assuring maximum possible accuracy of information (Section 607(b)). Interestingly, Equifax has just announced a "strategic alliance with CSC Credit Services, the conversion of 16 former Chilton and TRW credit bureaus to the CBI system, the

---

\*Robert Ellis Smith, an attorney and journalist, has published PRIVACY JOURNAL, a monthly newsletter with offices in Washington and Providence, R.I., since 1974.

purchase of copies of the Chilton credit files in greater Boston, Detroit, Syracuse, and Arizona, and copies of the TRW credit files in Connecticut and Colorado. These actions have brought hundreds of additional tape contributors to the CBI system." (1) Where's the competition here? No regulatory body has fully studied the impact of the antitrust aspects of the industry on consumer interests. Such an inquiry is long overdue.

2. Entry of Credit Bureaus into Direct Marketing In the past, credit records were one-dimensional, used only to determine the credit-worthiness of an individual. In the past few years, the national credit bureaus have sought other uses for the information in their files. One use was to sell the information to the consumer himself (TRW Credentials Service). TRW and CBI now market "credit risk models," computer-generated stereotypes of persons most likely to become financially delinquent. The cumulative information for these models comes from credit files. (See Appendix A.) TRW also has its Consumer Financial Database, which provides mail-order companies and direct marketers with the identity of bank cards held by individuals on mass mailing lists and their outstanding balances and their credit availability. TRW sells to merchants a demographic profile of the credit-card customers patronizing a retail store or a mail-order catalog. The company claims that a "Chinese wall" exists between its credit-reporting operation and its target marketing information, but does admit that at least name, address, and other data in its target marketing operation come directly from its credit files. In its trade advertising it makes no distinction between its credit operations and its target marketing services. Its trade advertising implies that its mailing-list operations use individual consumer information from credit files. (See Appendix B.) Equifax, in its trade advertising, admits that its lists "include data from credit files as well." (See Appendix C.)

TRW offers Profiling Services, in which the company runs a list against its own database "to determine whether the consumers on your list are demographically or financially different from the

population in a specific geographic area." This service is now sold to charitable solicitors as well as to commercial users.

TRW credit reports are now available through its Policy Management Systems Corp., to insurance underwriters, as well as to the billing and collection departments of insurance companies. Traditionally, credit reports had not been made available to the insurance industry.

TRW markets Financial Lifestyle Database, listing bankcard holders and ability to charge; Highly Affluent Consumer Database, listing households with incomes exceeding \$100,000; and Income Indicator Select, used to target more desirable prospects. The latter, according to TRW itself, is "statistically derived using TRW's nationwide consumer database." ("The income indicator is calculated through an analysis of all the information available on a household.") (2)

TRW pre-screens lists provided by Omni Marketing Systems in Michigan to select residents living near new supermarkets to receive complimentary check-cashing cards. Other supermarket chains and marketing firms plan to distribute plastic ID cards to shoppers and track their purchases each week electronically by use of the Uniform Product Codes and checkout counter readers. This will tie in with issuance of "electronic coupons." Some wholesalers may adopt this technique, which begins with data from credit files.

As a contractor with the U.S. Postal Service's National Change of Address system, TRW has first crack at change-of-address forms filed at post offices nationwide. TRW can market innovative list updates and can integrate this semi-monthly information with its credit files. How many U.S. citizens know that by innocently changing their address at the local post office they are involuntarily helping the nation's largest credit bureau to update those citizens' files? (3)

In all of these applications, credit information is being used

for secondary purposes -- purposes different from the one for which the information was gathered. This violates the intent of the Fair Credit Reporting Act and the key component of the Code of Fair Information Practices, accepted in the 1970s by the Department of Health, Education and Welfare's privacy study, the IBM Corp.'s privacy study, the Privacy Protection Study Commission, and the Business Roundtable. These principles of Fair Information Practices are the basis for all federal privacy legislation enacted since 1970.

These principles were endorsed at the time by TRW. The new uses of personal data by TRW violate a Code of Ethics and Operating Principles circulated by TRW in the 1970s to reassure regulatory bodies. (4)

The reason that information gathered for one purpose ought not be used for another purpose without notifying the data subject is simple: a piece of data supplied originally is never checked for accuracy if it is not important to the original transaction (one's Social Security number on a bank account, for instance). When that information is used for a purpose in which that same piece of data is crucial, the unconfirmed information can have negative consequences for the individual.

For example, since 1984 federal agencies have been providing to TRW and other credit bureaus information on thousands of student-loan defaulters and Veterans Administration beneficiaries with no procedure for making sure that the Social Security numbers of the persons involved are accurate. Many are not.

Another danger in this is that personal information is now freely flowing from a regulated environment (consumer credit reporting) to non-regulated environments (target marketing, direct mail, commercial credit-reporting, insurance). One consumer calls this the "flea-market approach" to consumer information.

In today's credit-reporting environment it is impossible for a credit bureau to verify that its thousands of institutional users and perhaps millions of individual users are using credit reports

for permissible purposes (Section 607(a)). For instance, Equifax has just agreed to provide individual automated credit reports to any of 50,000 businesses that subscribe to Dun & Bradstreet's commercial credit-reporting service. This permits employees of any of these 50,000 companies -- most of which never extend credit to individuals -- to have access to more than 150 million individual credit files! How can Equifax or the 50,000 companies be sure that these computer terminals with individual credit data are available only for permissible purposes 24 hours a day?

The FCRA permits dissemination of credit information to a person with "a legitimate business need for the information in connection with a business transaction involving the consumer." This should be tightened to prevent the use of credit files for secondary purposes.

3. "Super Bureaus" There's further evidence that the distribution of credit reports is out of control: the emergence of small, intermediary organizations that will search all of the credit bureaus and other sources for personal information on a named individual. They call themselves "super bureaus." They are actually information middlemen with personal computers and modems. The major credit bureaus unwisely choose to do business with these unestablished businesses who have no control over their clients' uses of credit reports. (4)

Frustrated consumers have no way of verifying information distributed by these "super bureaus" nor any way to locate them to discover whether credit reports are being disseminated in compliance with the FCRA. A New Jersey woman has complained that employers accessing a super bureau are denying her employment, but she has no way to verify this. (6) At the very least, the Federal Trade Commission should maintain a public directory of these organizations.

(A proposal unanimously passed by the California State Assembly this year, AB 539, attempts to regulate these super bureaus.)

4. "Clearinghouses" Another breed of credit reporting agency

demands scrutiny. These are the "clearinghouses" that act as credit bureaus for specific purposes, for alerting landlords to undesirable tenants, physicians to patients who have filed malpractice suits, motels to travelers not paying previous bills, and employers to job applicants who have filed workers' compensation claims. Some of these small clearinghouses or screening services keep lists of persons with spotty driving records or arrest records. One of these clearinghouses even listed persons making asbestos claims against Johns-Manville Corp.

A Chicago woman was caught in a maelstrom when she purchased a used car that turned out to be a lemon. She returned the automobile to the dealer and ceased making payments on the \$2200 owed. The dealership later went out of business, but her indebtedness and her "voluntary repossession" continued to be reported by a clearinghouse serving Chicago-area auto dealers. The clearinghouse's response to her pleas for help: "We regret we cannot be of assistance." (7)

Patients who have the misfortune of encountering more than one malpractice situation are labeled as "professional plaintiffs" by one malpractice clearinghouse. On the other hand, trial lawyers subscribe to a service listing doctors who have been sued for malpractice (a service that would not be covered by the FCRA, because it reports professional and business information). For six years, a California woman was kept on a waiting list for housing because a woman with the same name was listed in the UD Registry serving landlords. A Louisiana oil rig worker was forced to apply for work with his wife's Social Security number to avoid being rejected by a regional clearinghouse that lists, by Social Security number, employees filing claims for workers compensation.

Here the problem is that the owners of these specialized services often do not know about the FCRA or do not comply with it. By the time a complaint has been filed with the Federal Trade Commission, the company may have closed down its operation, moved

to another locality, or reopened under a different name. That is why all organizations subject to the FCRA must be required to register with the FTC.

5. Enforcement In the first decade of the Fair Credit Reporting Act, the Federal Trade Commission vigorously pursued violations. It issued useful guidance to credit reporting agencies and it handled consumer complaints. It pursued lawsuits restricting the antitrust actions of Equifax (then Retail Credit Co.) and inaccurate reporting involving the same company. In the 1980s, the FTC has been silent. It cut back its staff for credit compliance, it failed to keep abreast of trends in the industry. It issued virtually no guidelines or interpretations.

The law simply will not work well without a vigilant enforcement agency. Congress -- this subcommittee -- must oversee the Bureau of Consumer Protection to ensure that the FTC meets its responsibilities under the FCRA. It is not now doing so.

#### RECOMMENDATIONS (Keyed to Testimony Text)

1. The House Judiciary Subcommittee on Monopolies and Commercial Law should study concentration in the credit reporting industry and its impact on consumers.

2. Section 604 should be amended in its first line to read "may furnish personally identifiable information from a consumer report..." This will limit the use of information from a credit report for mailing lists, telephone solicitation, and other sophisticated marketing.

2a. Section 604 (E) should be amended to read "in connection with a business transaction initiated by the consumer." This will assure that credit information is used only for the purposes for which it was gathered unless the consumer is alerted otherwise, by applying for housing, requesting a catalog, using a credit card, or making a similar entry into the marketplace.

3 and 4. Section 621(d) should be added to read, "Any person doing business as a consumer reporting agency shall register with the appropriate enforcement agency in a form and manner devised by that enforcement agency so that the following information about each consumer reporting agency is available for public inspection by that enforcement agency and the Federal Trade Commission: name, trade names, address, telephone number, names of principal officers including a consumer liaison, states in

which it does business, date it was created or founded, and a description of the types of consumer information it regularly reports and the uses generally made of those reports. Failure to register shall be regarded as wilful noncompliance with this title."

5. This subcommittee should ask the Federal Trade Commission to report to it within one year on measures it has taken to enforce the Fair Credit Reporting Act with regard to the trends described in this hearing.

#### OTHER RECOMMENDATIONS

6. Section 609 (1) should be amended to read "[...] All information [...] in its files...." The major credit bureaus make tangible disclosure to consumers now as a matter of policy anyway. This has enhanced consumer reassurance about credit reports and accelerated the correction process. There is no rationale for permitting consumers (especially when dealing with small organizations in the business) to know only "the nature and substance" of their files, when they have an expectation that they will receive a copy of everything in the file. "Medical information" should not receive special treatment. This information, after all, is regularly seen by non-medical professionals; it is not really "medical information" at all. It is not threatening to the individual. Getting prompt disclosure of this kind of information has created the greatest difficulties under the act for consumers.

7. Section 610 (e) should be amended to lower the very high threshold for consumer lawsuits based on erroneous or damaging information, by deleting "any user of information," and by adding at the end of the paragraph "...or information compiled or disclosed in violation of Section 607." The first change removes the foolish prohibition against suing users of reports, who may have deceived the consumer reporting agency in the first place. The second change directs the attention of courts to the fact that lawsuits are permitted if a consumer reporting agency fails "to assure maximum possible accuracy" or "to make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user." Since 1975, California law (Cal. Civil Code 1786.52) has permitted consumer lawsuits against consumer investigative firms, with no apparent demise of the industry in that state.

#### Footnotes

1. Letter to customers from D. V. Smith, Executive Vice President, CBI, August 31, 1989
2. TRW Analytical Services brochure, 1989
3. Information first reported in Privacy Journal issues of May 1988, pages 1-5; November 1988, page 6; April 1989, page 1, 2, 4, 5, 6; May 1989, page 1
4. Privacy Journal, April 1989, page 1
5. Privacy Journal, March 1989, page 1 (by Simson Garfinkel)
6. Files of Privacy Journal
7. Files of Federal Trade Commission, notes in files of Privacy Journal



**"I know who my customers are. Now how do I find more of them?"**

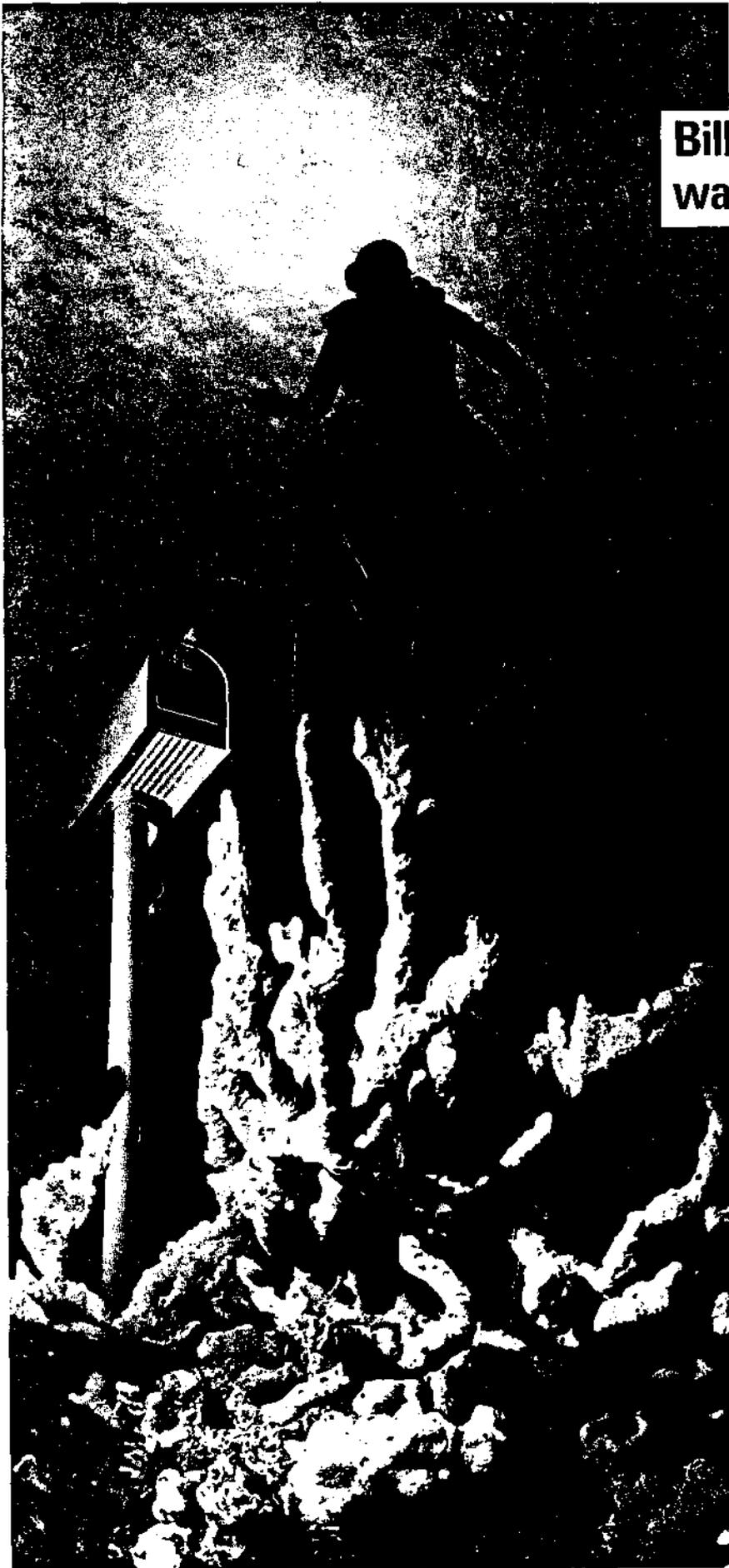
Bookstores know the readers. Airlines know the flyers. You know who your customers are, too. And with help from TRW, you can find more of them.

Modeling is a statistical analysis process which segments consumers by predicting their future behavior through present buying trends and patterns.

When it comes to statistical analysis, the more data you have to incorporate, the higher the probability that your results will effectively target your customers. Each TRW model is developed from our information-rich, nationwide database, comprised of over 138 million consumers. Our statisticians analyze demographic and credit information in this database to find your customers. Individuals can be segmented according to scores for response, conversion, retention, profitability or variables that you define as important.

Designing custom models is our specialty. They produce a multi-dimensional approach to identifying your potential customers, based on the retention and response behavior desired for your unique product offering.





## **Bill Hayes can't wait to hear from you.**

Bill Hayes is 32 years old, makes over \$40,000 a year, uses his credit cards, and just moved to Florida because he loves to scuba dive. And there are thousands more just like Bill waiting to hear from you. Ready to respond to your offer.

Locating all those people isn't easy. That's why you need TRW Target Marketing Services. Our PerformanceData<sup>SM</sup> System includes demographic and financial lifestyle information on over 140 million consumers nationwide. Combine this database with our full range of services, and the result is an in-depth profile of your customer's buying habits, product needs, financial lifestyle and history.

With TRW, you can improve your deliverability and your cost-efficiency, too. So when you're ready to reach the people who can't wait to hear from you, call us at **800.527.3933**. We'll put your direct marketing campaign on target.

**Nobody even comes close.**

---

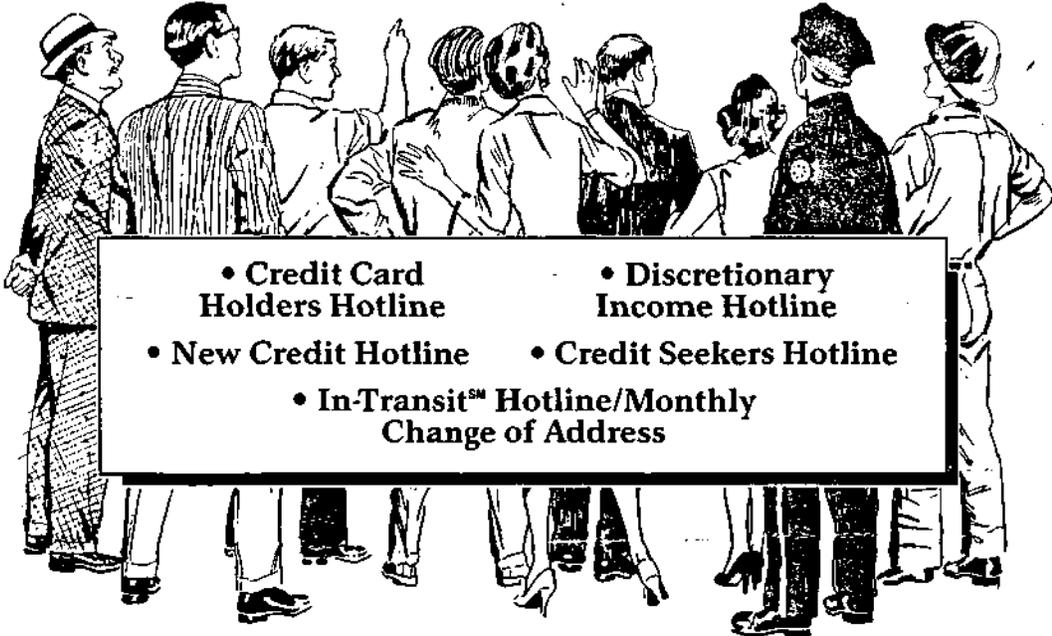
### **TRW Target Marketing Services**

---

600 City Parkway West  
Suite 700  
Orange, California  
92668

# **TRW**

Equifax Marketing Services  
presents  
Event Marketing  
People With The Power To Purchase



- Credit Card Holders Hotline
- Discretionary Income Hotline
- New Credit Hotline
- Credit Seekers Hotline
- In-Transit<sup>SM</sup> Hotline/Monthly Change of Address

This is a direct marketer's dream come true. Brand new event lists which draw on the data base of Equifax, Inc., the world's leading provider of information for consumer-initiated financial transactions since 1899. More than just demographic information, Event Marketing lists include data from credit files as well. This is a list of *prime prospects* — individuals who have real purchasing power and who are actively poised to spend.

Purchasing power indexes help you target those consumers with new spending capacity:

- Buyability Index
- Shopping Psychographics
- Credit Card Activity Index

Additional selects are available by type of credit:

- Bank Card
- Auto & Oil Card
- Retail Card
- Finance/Credit

Exact age is available:

- Names are available with exact age, as well as other individual demographics, such as sex, marital status and dwelling unit type.

Call now to take advantage of this special introductory offer:

- Test 2 segments and get a third one free.

To receive the Equifax Marketing Services Directory of Lists, send in the coupon or call Dana R. Gilbert at (203) 531-1091.

**DIRECT MEDIA LIST MANAGEMENT GROUP, INC.**

70 RIVERDALE AVE./P.O. BOX 4565  
GREENWICH, CT 06830/203 531-1091  
FAX # 203 531-0559

Yes! Please rush me the Equifax Marketing Services Directory of Lists!

Name \_\_\_\_\_

Company \_\_\_\_\_ Company Phone # \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_



**CONSUMER LIST MANAGEMENT**

A DIVISION OF DIRECT MEDIA LIST MANAGEMENT GROUP, INC.  
70 RIVERDALE AVENUE, P.O. BOX 4565, GREENWICH, CT 06830 • 203 531-1091