

August 15, 2012

Hon. Edward J. Markey
2108 Rayburn House Office Building
Washington, DC 20515

Hon. Joe Barton
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Washington, DC 20515

Hon. Henry A. Waxman
2204 Rayburn House Office Building
Washington, DC 20515

Hon. Steve Chabot
2351 Rayburn House Office Building
Washington, DC 20515

Hon. G.K. Butterfield
2305 Rayburn House Office Building
Washington, DC 20515

Hon. Austin Scott
516 Cannon House Office Building
Washington, DC 20515

Hon. Bobby Rush
2268 Rayburn House Office Building
Washington, DC 20515

Hon. Jan Schakowsky
2367 Rayburn House Office Building
Washington, DC 20515

Dear Representatives,

We are pleased to provide you with the following information in response to the letter you sent to David Williams on July 25, 2012.

About Merkle.

Merkle is a leading customer relationship marketing (CRM) agency. Fortune 1000 companies and leading nonprofit organizations work with Merkle to maximize the value of their customer portfolios. As described in more detail below, Merkle helps customers build marketing databases, analyze their marketing data, create advertising materials and connect to their customers through multiple media channels.

Merkle has been providing marketing services to its clients since 1988, employing over 1600 people in 14 different locations throughout the US. These locations include Little Rock, Arkansas; San Francisco and San Rafael, California; Denver, Colorado; Oak Brook, Illinois; Columbia and Hagerstown, Maryland; Marlborough, Massachusetts; Minneapolis, Minnesota; Montvale, New Jersey; New York, New York; and King of Prussia and Pittsburgh, Pennsylvania.

Many of the services performed for our clients involve storing and processing the data that is derived from the clients' customer interactions. Although our clients frequently provide Merkle with access to their customer information in order for Merkle to perform its services, Merkle does not own a proprietary database of consumer information. Merkle also processes data that we or our clients license from third parties. We process data collected by or licensed to our clients using complex analytical formulae designed to help them maximize their marketing effectiveness.

In your letter, you discussed the business of data brokerage and pointed to the practices of "mining, mapping, and sale of consumers' individual information" as "raising serious privacy

concerns.” See July 25 Letter at ¶ 1. We understand the spirit of your inquiry and we take this opportunity to inform you that Merkle is not in the business of collecting data directly from consumers and offering it for sale to the public, as the term “collection” is described in your July 25 letter. See ¶ 5. Merkle does not “min[e]...consumers’ individual information” or “develop detailed dossiers of consumers.” ¶ 1. Merkle is not in the business of “wholesale gathering, storing, and sale of the personal information of hundreds of millions of Americans.” *Id.* In short, Merkle provides technical and infrastructure solutions and does not collect data directly from consumers or engage in the wholesale gathering of consumer data.

Nevertheless, we appreciate the opportunity to respond to your questions to the extent they are applicable to Merkle’s business model. The numerical references in the responses below correspond with the numbering of the questions in your July 25, 2012 letter.

- 1. Please provide a list of each entity (including private sources and government agencies and offices) that has provided data from or about consumers to you or your contractors or affiliates from January 2009 through the present.**

Response to Question 1.

In most cases, Merkle receives consumer data from or as an agent of its clients who, in turn, have obtained the data directly from their customers. Contract restrictions as well as business propriety considerations limit our ability to disclose the names of our clients.

Merkle does license data from third parties on behalf of its respective clients. In these transactions, Merkle serves as the agent of the client and the data is not obtained directly from consumers.

- 2. Please list each type of data you or your affiliates or enterprise partners has collected from or about consumers, including racial, ethnic, or religious information, from January 2009 through the present.**

Response to Question 2.

As noted above, Merkle’s collection and receipt of data is done solely in conjunction with the processing of clients’ customer data in connection with the clients’ marketing campaigns or through the licensing of consumer data from third-parties on behalf of clients. The data is often stored within a client database and processed by Merkle.

3. Please describe each method by which you have collected information from or about consumers from January 2009 through the present and answer the following questions:

(a) Do you use social media to collect information about consumers? If yes, what types of information do you collect from social networks (i.e., friends, interests, etc.)? If yes, from what platforms do you collect this information?

(b) Do you collect data on consumers' mobile use and activity? If yes, what types of information do you collect about consumers' mobile use and activity? If yes, for what purposes is this information used (i.e., targeting on real-time ad exchanges)?

Combined Response to Questions 3.a and 3.b.

As with the services provided in connection with other media channels, Merkle receives from or is provided access by its clients to consumer data which clients obtained through social networks, mobile applications and communications with mobile devices in connection with their marketing programs. It is important to again note that Merkle does not collect or assemble information about individual consumers to operate its own line of proprietary database products that are sold to third parties.

4. Please explain each product or service, both online and offline, that you have offered to third parties from January 2009 to the present that uses data collected from or about consumers. For each product or service, please describe:

(a) Each type of data that is used in or by the product or service.

(b) Each type of entity that you sell or otherwise provide the product or service to.

Combined Response to Questions 4.a and 4.b.

Merkle offers products and services that make use of consumer data compiled by clients or third-parties on behalf of clients. The data collected and in many cases stored by Merkle on behalf of clients is kept separate for each client and used by Merkle and the client in the execution of the various marketing programs and services for the respective clients.

The following is a representative list together with brief descriptions of the products and services offered by Merkle to its clients:

Consulting Services. Merkle advises clients on how a marketing database is created while offering strategy and solutions that focus on the marketing techniques that are most likely

to produce the greatest impact at the lowest cost as well as how to best utilize the marketing data that the client obtains through its marketing campaigns.

Analytical Services. Merkle helps its clients analyze the data collected or used by them in their marketing programs by offering insight into how to best interpret the data for maximizing the client's engagement with current and prospective customers.

Database Services. Merkle assists its customers in planning, building, deploying and maintaining large computer database systems that allow clients to execute their marketing campaigns to current and prospective customers, manage the information collected from customers and prospects, and measure the results of their marketing programs.

Creative and Communications Services. Merkle's creative services are used by clients for both on-line and off-line marketing programs and include many of the traditional services associated with creative agencies such as providing recommendations about brands and campaign themes, designing and producing advertising materials and deploying them effectively.

Digital Media Services. Merkle has built its capabilities to allow clients to execute marketing campaigns through multiple digital media channels such as search, display, e-mail, mobile and social networks. The capabilities offered by Merkle allow clients to engage with current and prospective customers through various channels and the data obtained through these programs can be used by clients to create or improve future engagements with clients or prospects within the multiple channels.

(c) Any prohibitions or restrictions (i.e., contractual, technological, etc.) on the sale or use of the product or service.

Response to Question 4.c.

The industry in which Merkle operates together with the types of products and services offered to clients are frequently subject to restrictions. These restrictions are not only placed on Merkle in the performance of its services but also by Merkle on its clients and third-parties in connection with the use of Merkle's products and services. Merkle has dedicated resources to ensure compliance with applicable laws and regulations. Merkle employs various methods to enable both Merkle and its clients to comply with not only applicable laws and regulations but industry best practices and self-regulatory regimes as well. Merkle's agreements with its clients and third-parties with whom Merkle works include restrictions on the respective parties as to how data must be processed, with whom data can be disclosed or shared and the privacy and security measures that must be applied to the use, transfer, storage and return or destruction of such data. Merkle voluntarily participates in regimes sponsored by self-regulatory organizations such as the Direct Marketing Association (DMA).

(d) Whether or not the products or services involve lead-generation, including the sale of offer clicks or leads. If so, please explain.

Response to Question 4.d.

Merkle does not create or aggregate leads that are distributed to multiple parties. As described above, Merkle provides services that help its clients to identify prospective clients through its analytics and modeling capabilities.

(e) Whether or not the products, services, or business practices subject you or any affiliates to the Fair Credit Reporting Act (FCRA). If so, what products or services are subject to FCRA?

(f) Whether or not your company maintains completely separate, firewalled databases or data used for both FCRA and non-FCRA purposes. If used for both purposes, please explain.

Combined Response to Questions 4.e and 4.f.

Certain clients of Merkle use direct marketing for their consumer credit and insurance products. Merkle provides services as a third-party processor of prescreened consumer credit data that is used by clients to market their credit and insurance products and these activities are subject to the FCRA. Merkle maintains the data used for these FCRA-purposes in firewalled databases separate from the data used for non-FCRA purposes.

5. Are consumers able to access personal information that is held by your company? If no, why not? If yes:

(a) How may consumers access this information?

(b) What information are consumers given access to? Please list each type of information.

(c) How are consumers made aware of their right to access this information?

(d) What kinds of personal information are they required to provide to verify their identities?

(e) Do your terms of service allow you secondary uses of that verification information? If yes, what uses?

(f) How many consumers have requested access and how many requests has your company complied with?

(g) How long has your company provided consumers with this access?

Combined Response to Questions 5.a through 5.g.

Merkle does not collect or assemble information about individual consumers to operate its own line of proprietary database products that are sold to third parties. Merkle stores or processes data on behalf of its clients and rarely engages directly with consumers. Consumers seeking access to such information or changes or deletions thereto must contact the entity that owns the information, typically the client. As data is licensed to Merkle for specific contractual purposes, Merkle does not have the legal authority to process such requests directly from consumers. Because of this and the fact that it is Merkle's clients and not Merkle with whom consumers engage, Merkle receives few, if any, inquiries directly from consumers. In the event that Merkle receives an inquiry from a consumer regarding information about them, depending on the source of the data, Merkle forwards the request to the client or the third-party that provided the data about the consumer.

**6. Are consumers able to correct personal information that is held by your company?
If no, why not? If yes:**

- (a) How may consumers request corrections?**
- (b) How are consumers made aware of their right to correct this information?**
- (c) What kinds of personal information are they required to provide to verify their identities?**
- (d) Do your terms of service allow you secondary uses of that verification information? If yes, what uses?**
- (e) How many consumers have requested corrections and how many has your company corrected?**
- (f) How long has your company provided consumers with this option to request correction?**

Combined Response to Questions 6.a through 6.f.

Because of the reasons discussed in the response to Question 5 above and because consumers rarely contact Merkle directly with a request for access to, information about, or the correction of, personal information, any such requests are sent to the client or the third-party that collected the data and/or provided the data about the consumer.

- 7. Are consumers able to opt-out of the use or sharing of personal information about them? If no, why not? If yes:**
- (a) Is this a simple, full opt-out or do consumers select from a range of limited opt-out options? Please describe the various options that are offered.**
 - (b) Does this opt-out completely prohibit all uses, including collecting and targeting, or is it limited to an opt-out of targeting?**
 - (c) How may consumers opt-out?**
 - (d) How are consumers made aware of their right to opt-out?**
 - (e) What kinds of personal information are they required to provide to verify their identities?**
 - (f) Do your terms of service allow you secondary uses of that verification information? If yes, what uses?**
 - (g) How many consumers have requested to opt-out and how many requests has your company complied with?**
 - (h) How long has your company provided consumers with the option to opt-out?**

Combined Response to Questions 7.a through 7.h.

For the reasons discussed in the responses to Questions 5 and 6, because consumers very rarely contact Merkle directly to request to be opted-out from sharing their personal information, any opt-out requests are sent to the client or the third-party that collected and/or provided the data.

- 8. Are consumers able to request the deletion of their personal information? If not, why not? If yes:**
- (a) How may consumers request deletion?**

- (b) How are consumers made aware of their right to delete this information?**
- (c) What kinds of personal information are they required to provide to verify their identities?**
- (d) How many consumers have requested deletion and how many requests has your company complied with?**
- (e) How long has your company provided consumers with this option to request deletion?**

Combined Response to Questions 8.a through 8.e.

The reasons discussed in the responses to Questions 5, 6 and 7 are also applicable to this question. Merkle has almost no contact directly with consumers involving their personal information. Consequently, consumers do not contact Merkle with requests to delete their personal information. If received, in order to address the request, Merkle contacts the client or the third-party that collected and/or provided the data.

- 9. Does the company charge consumers a fee for any access, correction, opt-out, or deletion services? If yes, state the amount the company charges for each service. If yes, what is the total revenue earned by the company through such fees during each of the last five years?**

Response to Question 9.

Merkle does not provide services related to, nor does it charge consumers any fee for, consumers' access, correction, opt-out or deletion of their personal information.

- 10. How does your company store each type of data collected from or about consumers (please distinguish between types of data, if applicable)? What security measures do you have in place to safeguard the data collected?**

Response to Question 10.

As discussed above, Merkle is not in the business of collecting data about consumers other than as an agent for its clients. However, Merkle does have in place robust security measures to safeguard clients' data stored on its servers. Merkle has a mature security program based on the ISO27001/2 international standards, and a dedicated IT Security function and budget. Technical controls include industry-leading Juniper firewalls in DMZ/deny by default configurations; Tipping Point network intrusion prevention systems; Symantec SEP antivirus/antispware on all endpoints; Symantec Data Loss Prevention technology; Bluecoat

web content filtering and Juniper VPN with Verisign soft token multifactor authentication. Administrative controls are in keeping with ITIL concepts and focus on compliance. Highlights include monthly vulnerability scanning of all devices and remediation using standing maintenance cycles; internal policy compliance assessments; and annual SSAE16 and third party perimeter scanning programs. Strong physical controls are provided through proximity card access systems with biometric authentication to sensitive areas such as data centers; video surveillance and active monitoring by a 24 hour-a-day, 7 day-a-week operations staff; and strictly limited data center access lists.

11. What encryption protocols or other security measures do you put in place to prevent the loss of or acquisition of data that is transferred between your company and outside entities?

Response to Question 11.

Merkle utilizes several encryption technologies and tools such as Secure FTP (sFTP), ConnectDirect and PGP/WinZip for file transfers; TLS for email on a domain level; SSL/3DES for web traffic and AES 256 for all tape backups to offsite storage.

12. What review process do you have in place for entities who wish to purchase personal information from you (i.e., do you evaluate their data security measures or whether the entity is a legitimate business)? Do you conduct any follow-up audits? If not, why not? If yes, please describe the nature and timing of these audits.

Response to Question 12.

Merkle is not in the business of offering personal information for sale to the public. Merkle only licenses personal information from third-parties to its clients, many of which are Fortune 500 companies and all of which must go through a vetting process. The companies that allow Merkle to sublicense data to our clients generally require Merkle to make its clients agree to allow Merkle and/or the original licensor to audit the client's use of such data.

13. Do you provide notice to consumers about your data collection, use, or sharing practices? If no, why not? If yes, please describe how you provide this notice.

Response to Question 13.

As noted above, Merkle does not collect data directly from consumers as the question contemplates. However, Merkle does have a privacy policy, which is available on the company's website at <http://www.merkleinc.com/privacy>.

14. Does your company compile information from or about children or teens? If yes:

- (a) Do you also sell or otherwise provide this information to another entity?**
- (b) Do you distinguish between information about children ages 12 and under from information about teenagers ages 13-17?**
- (c) Are different procedures in place to allow children and teens to access, correct, or delete their personal information, or opt-out of sharing of this personal information? If not, why not?**

Combined Response to Questions 14.a through 14.c.

Merkle is not engaged in the business of compiling information on individuals, including children and teenagers. Our clients are responsible for complying with any laws or regulations regarding the individuals from or about whom they collect information. If they collect information on those under 18, they would be responsible for any laws relating to such collection, including the Children's Online Privacy Protection Act (COPPA).

We appreciate the opportunity to respond to the questions presented in your July 25, 2012 letter. We have made every effort to provide you with the information that we believed was responsive to the questions. We will be happy to assist in providing you with additional information should you have further questions related to these matters.

Sincerely,



Craig Dempster
Executive Vice President
Merkle Inc.