

Robert J Tennessen
Attorney
Minneapolis, Mn 55405

To: Commissioners, ABA Representatives, and Observers

Fr: R. J. Tennessen, ULC Commissioner

Re: Thought regarding the Collection & Use of Personally Identifiable Data

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Maximizing profit is only one value upon which to base this act; preserving our democracy and protecting personal autonomy are even more important. To draft a meaningful and useful act we must be guided by the need to preserve and enhance our democracy, and to recognize the role and limits of personal autonomy and responsibility.

If the act measures each provision solely in terms of economic expediency, our democracy and our personal autonomy will be debased. It will do nothing to protect against the existential threat to both our democracy and our personal freedom posed by the rampant and uncontrolled collection and use of data about individuals.

To base the act solely on the economic theory that maximizing gain is the only legitimate business goal, epitomized by Milton Friedman in his famous interview with Pill Donahue when he said that greed is good, that greed drives all human action, and that it results in the greatest good for society, standing alone without qualification, furthers the destruction of both democratic values and personal autonomy.

To assert that the great wealth created by the rise of Apple, Alphabet (Google), Facebook and Amazon is because they were unfettered in their freedom to innovate and compete is belied by the recent testimony of their CEO's before the US House Judiciary's Antitrust Subcommittee. Company documents submitted to the committee may indicate predatory business practices, theft of digital content, and forcing competitors to sell to them or be driven out of business. It is alleged these companies intentionally used these tactics to thwart competition, that they innovated some, but preyed on other innovators using predatory practices to force others to sell their innovations or be driven out of business, that they destroyed others' ability to innovate and compete. The argument that the committee's draft act will stifle economic growth rings hollow.

The assertion that the act should not require companies to change their business models or that it may cost too much also rings hollow, when the common good requires change. Laws often require businesses to change their mode of doing business. President Teddy Roosevelt signed into law the Meat Packing Act of 1906 forcing packing houses to change their business model and improve sanitation and food safety for the common good. The 1964 Civil Rights Act forced businesses to change their business practices. Models built upon segregation were prohibited. Brown vs. Topeka Bd of Education forced schools to change their mode of operation. Undoubtedly all of these actions cost businesses and schools some money.

Businesses do use some of the personal data to improve their products and services. But that and other data about us, collected from known and unknown sources, is accumulated and processed through artificial intelligence algorithms to predict what we may buy or do. This manufactured ‘predictive data’ is sliced and diced and bought and sold to organizations that want to influence our real time actions: to adopt a view, to buy a product or take some action that will benefit the data purchaser. It is used to influence what we see read and hear, where we shop, what we buy, and track our movements. That vast trove of information about us, bought, sold and used by known and unknown entities significantly affects our democracy and our autonomy in ways of which we are unaware. In the eyes of Big Data our personal data is a mere commodity to be bought and sold to the highest bidder, and we have no control.

Rather as we draft the act, we should reflect upon Adam Smith’s economic theory that people act in their own enlightened self-interest. Smith was also a moral philosopher and believed that acting in one’s self-interest is moral; but he does not equate self-interest with selfishness or greed. Smith believed that being interested in other people is most often in our own best interest since it increased our social value which in turn increased our economic opportunities. He also had a strong moral code that informed his judgment and actions.

Enlightened self-interest accommodates democratic values, personal autonomy, and economic growth. Greed does not. Smith highly valued limited government as necessary for economic growth and freedom but was not a champion of a *laissez-faire* capitalism. He believes that the market economy he has described functioned best and deliver its benefits only when its rules are observed – when property is secure and contracts are honored. Acting in one’s own enlightened self-interest is only possible when one has the autonomy to exercise it.

The danger of unfettered collection and use of personal information without regard to democratic values and individual autonomy is on clear display today in China and unfortunately in other countries as well. *Alexander Solzhenitsyn* in his semibiographical novel *Cancer Ward* wrote:

As every man goes through life he fills in a number of forms for the record, each containing a number of questions . . . There are thus hundreds of little threads radiating from every man, millions of threads in all. If these threads were suddenly to become visible, the whole sky would look like a spider's web, and if they materialized as rubber bands, buses; trams and even people would all lose the ability to move, and the wind would be unable to carry torn-up newspapers or autumn leaves along the streets of the city. They are not visible, they are not material, but every man is constantly aware of their existence.... Each man, permanently aware of his own invisible threads, naturally develops a respect for the people who manipulate the threads.

Protecting our democracy and individual autonomy is in our enlightened self-interest. As Smith suggests our economy will function best and deliver its benefits when secured and protected by law. A meaningful and effective data privacy act will do just that.
