
Wave of Litigation Targets Magazine Publishers for Selling Subscriber Data

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Relying on a decades-old state statute, magazine subscribers have recently launched a series of putative class actions against media companies for allegedly data selling their subscriber data. The lawsuits allege that the statute prevents magazine publishers from selling subscribers' personal information to data miners, aggregators and other third parties without subscribers' consent.

In 1988, a year after the release of then-Supreme Court nominee Robert Bork's video rental history, Congress passed the Video Privacy Protection Act ("VPPA"). The Act grants a private right of action to any consumer of a video tape service provider that knowingly discloses the consumer's personally identifiable information to third parties.¹ A dozen states have enacted their own analogues to the VPPA.² Michigan's version of the Act—the Preservation of Personal Privacy Act ("PPPA")—goes the furthest, extending the disclosure prohibitions to sellers of not only video recordings, but also "books or other written materials."³ The PPPA prohibits covered entities from "disclos[ing] to any person, other than the customer, a record or information concerning the purchase, lease, rental, or borrowing of those materials by a customer that indicates the identity of the customer."⁴

It took nearly 25 years for the PPPA's scope to be tested in court. In *Halaburda v. Bauer Pub. Co., LP*,⁵ a judge declined to dismiss a putative class's PPPA and unjust enrichment claims, holding that the statute applied to magazine publishers who allegedly sold lists of their customer's names, home addresses and magazine subscription choices to third parties. The court also concluded that PPPA claimants need not "suffer any actual injury apart from a violation of the statute."⁶ In a similar case, a court determined that the alleged disclosure of a plaintiff's personal information meant that she did not receive the full benefit of her magazine subscription.⁷ Last year, another court certified a class of subscribers to *TIME*, *Fortune* and *Real Simple* magazines for violations of the PPPA.⁸

Within the last six months, putative classes of magazine subscribers have filed similar complaints against Consumers Union of the United States, Time Inc., Hearst Communications, Inc. and Mansueto Ventures LLC for violating the PPPA and for unjust enrichment.⁹ The complaints allege the publishers sold subscribers' personal information—including their full names titles of magazines subscribed to, and home addresses—to data miners and other third parties without obtaining permission. The complaints also claim that the media companies traded subscribers' information

with data miners and aggregators for the purpose of supplementing their customer files with other sensitive data about subscribers, such as age, income level, and purchasing habits. Although it is unclear whether this litigation trend will continue, it is clear that enterprising plaintiffs' attorneys are focusing on publishers' data selling practices. To avoid liability, publishing companies should familiarize themselves with this trend and ensure that their practices comply with the PPPA.

¹ 18 U.S.C.A. § 2710.

² Conn. Gen. Stat. Ann. § 53-450 (2013); Del. Code Ann. tit. 11, § 925 (2013); Iowa Code Ann. § 727.11 (2013); La. Rev. Stat. Ann. § 37:1748 (2013); Md. Code Ann., Criminal Law § 3-907 (2013); Mass. Gen. Laws Ann. ch. 93, § 106 (2013); Mich. Comp. Laws Ann. § 445.1712 (2013); Minn. Stat. Ann. § 325I.02 (2013); N.H. Rev. Stat. Ann. § 351-A:1 (2013); N.Y. General Business Law § 673 (2013); R.I. Gen. Laws Ann. § 11-18-32 (2013); and Tenn. Code Ann. § 47-18-2204 (2013).

³ Mich. Comp. Laws Ann. § 445.1712 (2013). The only other state statute broader than the VPPA is Rhode Island's, which applies to "video films, records, cassettes, and the like" R.I. Gen. Laws Ann. § 11-18-32 (2013).

⁴ Mich. Comp. Laws Ann. § 445.1712 (2013). The PPPA is also referred to as the Video Rental Privacy Act ("VRPA").

⁵ No. 12-CV-12831, 2013 WL 4012827, at *3 (E.D. Mich. Aug. 6, 2013).

⁶ *Id.* at *4;

⁷ *Kinder v. Meredith Corp.*, No. 14-CV-11284, 2014 WL 4209575, at *7 (E.D. Mich. Aug. 26, 2014).

⁸ *Coulter-Owens v. Time, Inc.*, 308 F.R.D. 524, 528 (E.D. Mich. 2015).

⁹ Class Action Complaint, *Ruppel v. Consumers Union of United States, Inc.*, No. 7:16-CV-02444 (S.D.N.Y. Apr. 1, 2016); Class Action Complaint and Demand for Jury Trial, *Perlin v. Time Inc.*, No. 2:16-CV-10635 (E.D. Mich. Feb. 19, 2016); Class Action Complaint, *Edwards v. Hearst Communications, Inc.*, No. 1:15-CV-09279 (S.D.N.Y. Nov. 24, 2015); Class Action Complaint and Demand for Jury Trial, *Bush v. Mansueto Ventures LLC*, No. 2:15-CV-13716 (E.D. Mich. Oct. 20, 2015).