The consumer reporting industry is big business. Information about consumers is often sought by lenders, credit brokers, insurance companies, employers, and others who use the information to minimize the risk of extending credit, underwriting insurance, or hiring a new employee. The applicant provides some of this information. However, companies called consumer reporting agencies (CRAs) aggregate and store information on individuals and sell it to those who desire it, such as potential creditors, prospective employers, landlords, and insurers.

The Consumer Data Industry Association (CDIA) is the trade association for the CRAs. CDIA reports having 120 members, whose products are used in more than nine billion transactions each year. There are about three billion credit reports issued annually in the United States. Only about 44 million of these credit reports go to consumers. CRAs play an integral and expansive role in the United States economy, as they can facilitate, or in many cases frustrate, a consumer’s access to credit, and determine the speed of credit transactions (credit grantors can now receive consumer reports almost instantaneously).

The consumer credit reporting industry processes a considerable amount of data. Each CRA receives from data furnishers approximately 1.3 billion updates for more than 200 million consumer files each month—or about four billion pieces of information collectively. There is an average of more than fifteen changes to a credit file each month for each consumer.

The largest and most critical consumer reporting agencies are the three nationwide CRAs—Experian, Equifax, and TransUnion, or “the Big Three.” These three nationwide CRAs overwhelming dominate the market for consumer reports focusing on creditworthiness, i.e., credit reports. They essentially form an oligopoly for the credit reporting market. In addition, there are two major developers of credit scoring software, FICO (formerly Fair, Isaac & Co.) and VantageScore (which is a joint venture of the Big Three).

In addition to the Big Three, other nationwide “specialty” CRAs and also many smaller CRAs operate throughout the United States. Some of these smaller CRAs are “resellers,” who buy consumer reports from the Big Three and then re-sell them, often adding their own information or combining reports of different CRAs. Despite being customers of the Big Three, the relationship between resellers and the Big Three nationwide CRAs has sometimes been acrimonious. Indeed, resellers have alleged a plot by the Big Three to drive smaller CRAs out of business, from four hundred in 2000 to only sixty in 2011.

In addition, nationwide specialty CRAs specialize in particular consumer information, including criminal records histories, medical records or payments, tenant history, bank account or check writing history, employment and salary history, or insurance claims.

Consumer credit reporting can benefit both credit grantors and consumers. But the CRAs’ extensive collection of information, and the vast numbers of consumers on whom they report, creates serious concerns about the accuracy of the information they keep and about the adequacy of their measures designed to protect consumer privacy, including protection from identity theft.

A consumer report contains a substantial amount of information. To obtain a report, the CRA’s customer typically has access through the Internet or uses special software or a terminal linked to the CRAs with which the customer has a subscription agreement. Once appropriate passwords and consumer identifying information have been inputted, the CRA’s search algorithm needs only seconds to return reports that match all, or even just some, of the identifying information. For a description of the typical contents of a consumer report, see §3.2 infra.

A subset of consumer credit reports called “investigative reports” contain far more information than a standard consumer credit report. These reports are discussed in Chapter 15 infra. Credit scores are another important component of consumer reports, and are often used to determine whether to issue credit and the terms of that credit. Credit scores are discussed in Chapter 16 infra.

CRAs obtain their information for non-investigative reports from three sources: their subscribers, public records, and the information that consumers report on themselves (usually filtered through a subscriber). CRAs provide subscriber services to any number of kinds of creditors: banks, retailers, insurers, landlords, and others. These subscribers receive consumer reports from the CRA, and CRAs obtain a great deal of the information in their reports from their subscribers, who regularly send the CRA information on the accounts of their customers so that the CRAs can constantly update the information. Frequently, a creditor will keep a record of all its customers in a computer file and periodically update or “dump” the information into the CRA’s files. For investigative consumer reports, CRAs receive information from a fourth source: third-party interviews with a consumer’s friends, neighbors, and colleagues.
Other information comes from public records—deaths, bankruptcies, court judgments, dispositions of lawsuits, and criminal records. Often, CRAs will contract out the collection of public record information to other companies.24 Also, some federal, state, and local government agencies will sell information such as property tax rolls, motor vehicle registrations, workers’ compensation filings, and police reports to CRAs.

Consumers must keep in mind that CRAs’ customers are not the consumers on whom they report. Rather, the real customers are the credit grantors and other users who subscribe to the CRAs’ services. This creates a precarious relationship between CRAs and consumers. The consumer’s ability to access credit, employment, insurance, or other critical necessities depends on the agencies’ accuracy in documenting their credit history or other information, as well as their prompt correction of mistakes once they are discovered. Yet, when consumers are confronted with a CRA that refuses to correct inaccurate information, the consumers cannot “vote with their feet” and change to another CRA.

This lack of power can cause large problems for consumers, because consumer reports are often inaccurate, and consumers have inordinate trouble getting erroneous reports corrected. The studies showing significant levels of inaccuracy are discussed in § 4.1.3 [4], infra.

Specific types of problems include mismerged files, identity theft, and the failure of furnishers of information to properly investigate the accuracy of information they report to CRAs. These problems are discussed in Chapters 4 [5], 6 [6], and 9 [7], infra. Other issues arise with respect to users of information, discussed in Chapters 7 [8] and 8 [9], infra.

Footnotes


13 [13] Id. at 21. See also Dixon v. Experian Info. Solutions, Inc., 2014 WL 2881589 (N.D. Ind. June 25, 2014) (Experian “gathers and stores . . . approximately 2.6 billion trade lines, from approximately 30,000 different sources, belonging to an estimated 300 million customers, with approximately 50 million updates daily”).


15 [15] See § 2.6.1 [14], infra (discussing the definition of a “nationwide” consumer reporting agency).

16 [16] Some of the Big Three CRAs also sell reports on businesses, which are not covered under the FCRA. See, e.g., Belsito Communications, Inc. v. Dell, Inc., 2013 WL 4860585 (S.D.N.Y. Sept. 12, 2013) (lawsuit over credit report on corporation issued by Equifax).

1.2.2 About the Industry

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Solutions, Inc., 650 F.3d 1139 (8th Cir. 2011); Credit Bureau Services, Inc. v. Experian Info. Solutions, Inc., 828 N.W.2d 147 (Neb. 2013) (jury verdict in favor of Experian in lawsuit brought by reseller claiming Experian attempted to drive it out of business).

18 [18] See § 16.4.5 [15], infra.

19 [19] See § 2.6.2 [16], infra.

20 [20] See § 2.6.3 [17], infra (describing resellers).


22 [22] See Nat’l Credit Reporting Ass’n, Inc. v. Experian Info. Solutions, Inc., 2004 WL 1888769 (N.D. Cal. July 21, 2004) (allegations that CoreLogic colluded with Big Three to drive other resellers out of business); Credit Bureau Services, Inc. v. Experian Info. Solutions, Inc., 828 N.W.2d 147 (Neb. 2013) (antitrust lawsuit claiming that Experian raised minimum purchase requirement for resellers from $250 per month to $5000 per month in part to successfully “thin the ranks of smaller” CRAs).

23 [23] See § 2.6.2 [16], infra.

24 [24] See § 4.3.2.5 [18], infra.

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