

**STATEMENT OF**

**JOHN BILICH  
DEPUTY COMMISSIONER, OPERATIONS  
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL  
COMMITTEE ON CONSUMER AFFAIRS  
NOVEMBER 18, 2013**

**Good afternoon, Chairman Garodnick and members of the Council. I am John Bilich, the Deputy Commissioner of Operations for the New York City Police Department. I am joined by Ricky Wong, Assistant Commissioner for Community and Government Relations of the New York City Department of Consumer Affairs.**

**On behalf of Police Commissioner Raymond W. Kelly, I am pleased to be here today to discuss how pawnbrokers, scrap processors and other dealers in second-hand goods are able to assist in curbing property theft, as well as to seek your support for the bill before you, Intro. 1177, which is intended to make that assistance easier and more productive.**

**New York City is confronting a continuing increase in the theft of electronic devices, fueled by the constant development and introduction of new products which are highly attractive to criminals – they are valuable, portable, and unfortunately much too easy to resell. For the last six years, the theft of electronic products has accounted for over 40% of robberies, burglaries and grand larcenies in the City. Driven by the theft of portable electronic devices, and particularly Apple products, property crime has greatly increased in New York City: in 2012 there were approximately 16,000 thefts of Apple devices alone, which exceeded the increase for overall crime in New York City. In the absence of the increase in Apple thefts, the City would have experienced a decline in 2012. In 2013, as of November 10<sup>th</sup>, cellphones were involved in nearly 45% of robberies, and over half of the devices stolen were iPhones.**

**The New York City Police Department has been in the forefront of combatting this phenomenon. On the national level, Commissioner Kelly worked with Senator Chuck Schumer and the Federal Communications Commission to obtain an industry-wide commitment to develop a shared, centralized database that will prevent stolen smartphones from being able to be reused, based on a unique identifier, the International Mobile Equipment Identity number, or IMEI.**

**At the local level, the Police Department has employed a variety of targeted crime prevention efforts including comprehensive public education, a few examples of which are attached to my statement and available on our website. (See also our June, 2013 Weekly Crime Prevention Tips on Outsmarting Phone Thieves at: [http://www.nyc.gov/html/nypd/html/crime\\_prevention/crime\\_prevention\\_tips\\_june\\_2013.shtml](http://www.nyc.gov/html/nypd/html/crime_prevention/crime_prevention_tips_june_2013.shtml), with informational videos posted at:**

<http://www.youtube.com/watch?v=w69EhGTBEw0> and  
<http://www.youtube.com/watch?v=h-w-h4NzKtQ>.)

We have also focused on the commission of these crimes with extensive analysis, pattern identification, officer training, dedicated staffing, and specialized information gathering and investigative techniques. However, a large part of the way to drive this particular kind of crime down is to create a disincentive for the theft, since the harder it is to fence the item, the less likely it is to be stolen in the first place. To that end, pawnbrokers and second-hand dealers play a crucial role in the effort to prevent theft, not only of electronics, but also of other valuable commodities, particularly jewelry and scrap metal. We have therefore explored what we can do, together with these responsible businesses, to “dry up” the market for stolen goods.

Pawnbrokers and second-hand dealers in New York City are licensed by the Department of Consumer Affairs (DCA), and their recordkeeping practices are monitored by both DCA and the NYPD. There are currently 464 pawnbrokers, 78 scrap metal processors, 763 used car dealers, and 5,029 general second-hand dealers licensed in New York City. It is vitally important to ensure that accurate and complete records are maintained by these businesses, which may unwittingly be used as the repository of stolen property. DCA inspectors and NYPD officers must routinely visit these locations, currently numbering over 6,000, to inspect what is informally called the “Police Book,” that is, the log book containing a record of each transaction on tear-off sheets, to ensure that they are completed accurately and that they correctly reflect the property located in the store. But in an age of omnipresent computers and diminished government resources, it is necessary to update the manner in which records are created and maintained, and the way in which these routine inspections are conducted.

In an effort to address the cumbersome and inefficient nature of the current recordkeeping system, the City introduced a comprehensive program aimed at encouraging electronic recordkeeping in this area. The NYPD has engaged a web-based electronic data transfer service, called Leads Online, to serve as the repository of transaction records for pawnbrokers and second-hand dealers. The businesses have registered with Leads Online on a voluntary basis, and they have simply uploaded information into Leads Online’s reporting system instead of maintaining hard-copy records. At present there are over 700 pawnbrokers and second-hand dealers voluntarily utilizing the system, saving time and ensuring that their entries will be complete and legible.

Leads Online provides a user-friendly electronic form to be completed for the transaction, thereby eliminating the common problems associated with handwritten paper records, such as illegibility or unintentional gaps in information, that can result in summonses for failure to comply. Instead of physically visiting the businesses to review and collect transaction records, enforcement personnel are able to conduct a “virtual” inspection by accessing Leads Online and examining the entries. Enforcement personnel continue to make physical inspections, but the need to do so is less frequent and is facilitated by the information that the inspector or police officer has already reviewed.

Based on four years' experience with the voluntary program of electronic recordkeeping utilizing Leads Online, we believe that it is time to update the law to require electronic recordkeeping for pawnbrokers and for certain categories of second-hand dealers: those dealing in jewelry, electronics (excluding kitchen appliances), pawn tickets, and scrap metal. These categories of businesses have been selected because they are more likely to be victimized by criminals seeking to fence stolen property than, for example, a used clothing store, and the maintenance of complete records of their transactions assumes much greater importance. We also note that the growth in the number of pawnbroker and second-hand businesses in New York City, from approximately 4,000 three years ago to over 6,000 today, is another factor to be considered when devoting limited police and DCA resources to an expanding universe for inspection. It is critically important that the City do all it can to implement creative and efficient strategies to ensure accurate recordkeeping made possible by evolving technology, while saving enforcement time.

Intro. 1177 would not change the types of records that the Administrative Code and the General Business Law already require to be kept, with one crucial exception: it would authorize the Police Commissioner to require the business to provide a digital photograph of the article along with the other required information. This requirement is especially important when attempting to locate stolen jewelry, and would not be unduly burdensome given the ready availability of inexpensive digital cameras or other electronic devices with the capacity to take photos. For both second-hand dealers and pawnbrokers, the bill would require the business to acquire and maintain the necessary electronic equipment, including a computer with internet connection, a digital camera, and, for scrap processors, an electronic signature pad.

While not including electronic recordkeeping for used car dealers, we note that Intro. 1177 would expand the requirements for those selling used motor vehicles to include in their records the vehicle identification number and additional identifying information regarding the purchaser and destination of the property. We believe that this represents a reasonable and modest expansion of the recordkeeping required in connection with the sale of used cars, to create a more complete record of the transaction and to help locate stolen property.

An important benefit to the use of electronic recordkeeping is the ability to promptly solve property crimes that would otherwise not be solved, enabling law enforcement to reunite owners with their stolen property and bring the perpetrators to justice. Transaction information uploaded into Leads Online includes serial numbers, IMEI numbers, photos, and other information conclusively identifying the property, which is capable of being cross-referenced against complaints of stolen property as soon as the transaction is uploaded. The ability of the system to conduct searches for stolen property items and to identify the purported owner offering the property for sale or pawn has already resulted in hundreds of investigative leads that have led to recovery of the property and arrest of the thieves. The following examples illustrate the type of successful uses of this system:

- **An Apple iPad and iPhone 5 were removed from a gym locker at a local community college. Two days later, a transaction uploaded into Leads Online matched the serial number of one of the items; the perpetrator was located, admitted to taking the property, and was arrested.**
- **Unknown individuals entered a residence and removed several valuables including televisions, a Microsoft Xbox, and Nintendo Wii. The serial number of the Xbox was recorded and an alarm transmitted. Twenty-three days later the X-box was sold at a pawnshop by an identified individual, and the serial number matched the stolen item. Detectives visited the pawnshop, validated the information and the item became evidence. The individual was interviewed and arrested two months after the theft for criminal possession of stolen property, and provided investigators with information identifying the burglar, who was subsequently arrested as well.**
- **A victim was grabbed from behind and robbed of his iPod Touch and jewelry by two perpetrators. Seven minutes later, the iPod Touch was pawned nearby. Leads Online provided the match, and one of the thieves was identified and arrested.**

**The mandatory use of electronic recordkeeping for pawnbrokers and second-hand dealers is growing, especially among municipalities whose resources are stretched to the limit. Cities including Chicago, Philadelphia, and, in New York State, Syracuse and Rochester have all enacted local laws requiring electronic recordkeeping. In our case, the electronic data service is provided at no cost to the business, with most businesses already possessing the required equipment. The service offers strong tech support and is compatible with over 150 software programs already used by pawnbrokers and second-hand dealers. Once the business is enrolled, the reporting process is seamless and uploads are performed (in most cases nightly) after close of business.**

**The City's experience to date has been very positive, and the types of businesses which have voluntarily registered with Leads Online already fall into the categories of business covered by the bill, primarily dealing in jewelry and electronics. Intro. 1177 would greatly facilitate both administrative efficiency and crime reduction, by providing a simple way to keep accurate transaction records. The ultimate results would be enormous relief to those whose stolen property is recovered, as well as a strong deterrent effect for those whose avenues of disposing of stolen property are systematically closed to them.**

**Accordingly, we thank you for the opportunity to discuss the ways in which pawnbrokers, second-hand dealers and scrap processors may participate in driving down property crime in New York City, and we hope that you will approve Intro. 1177 as a vital part of that effort. We will be pleased to answer any questions you may have.**

## TRANSIT DISTRICTS

The following Transit Police Districts can provide etching services free of charge.

### MANHATTAN LOCATIONS:

**District 1**

59<sup>th</sup> St. & Columbus Cir.....(212) 258-2840

**District 2**

W. Broadway & Lispenard St.....(212) 966-5711

**District 3**

145<sup>th</sup> St. & St. Nicholas Ave.....(212) 281-5303

**District 4**

Union Sq. & 4<sup>th</sup> Ave.....(212) 253-7511

### BRONX LOCATIONS:

**District 11**

161<sup>st</sup> St. & River Ave.....(718) 293-8311

**District 12**

Morris Park & E.180<sup>th</sup> St.....(718) 794-2300

### QUEENS LOCATIONS:

**District 20**

Queens Blvd. & Main St.....(718) 558-5400

**District 23**

222 Beach 116<sup>th</sup> St.....(718) 474-3319

### BROOKLYN LOCATIONS:

**District 30**

Hoyt St. & Schermerhon St.....(718) 797-1788

**District 32**

960 Carroll St.....(718) 221-6600

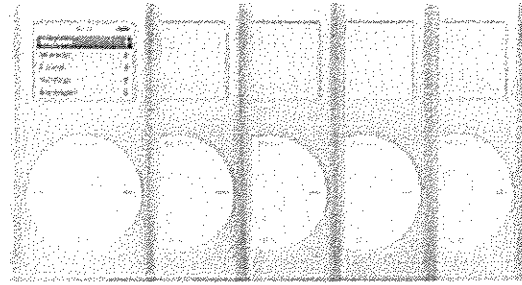
**District 33**

2399 Fulton St.....(718) 345-4900

**District 34**

2869 Stillwell Ave.....(718) 996-3215

# HELP US HELP YOU



# REGISTER YOUR ELECTRONIC DEVICES TODAY

## NEW YORK CITY POLICE DEPARTMENT



**TRANSIT BUREAU  
CRIME PREVENTION UNIT**  
130 Livingston Plaza  
3rd Floor  
Brooklyn, NY 11201  
**(718) 694-1390**

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***NYPD  
ELECTRONIC DEVICE THEFT  
REDUCTION PROGRAM***

The NYPD Transit Bureau has an excellent way for all passengers on our subway system to safeguard their electronic devices. Such as, i-Pods, Cell phones, Portable PlayStation, Blackberries, etc.

All you have to do is the following:

- Stop by one of our etching stations and have one of our officers etch your device.
- Call one of the transit districts listed in this brochure for available times for etching services.

The process takes about 3 minutes. The officer will give you a registration form to fill out. By the time the form is done, your electronic device would have been etched.

***HOW DO WE  
IDENTIFY OUR  
ELECTRONIC DEVICES***

We use an invisible Ultra Violet permanent ink marker, which glows under an ultra violet light. The markings are invisible to the human eye.

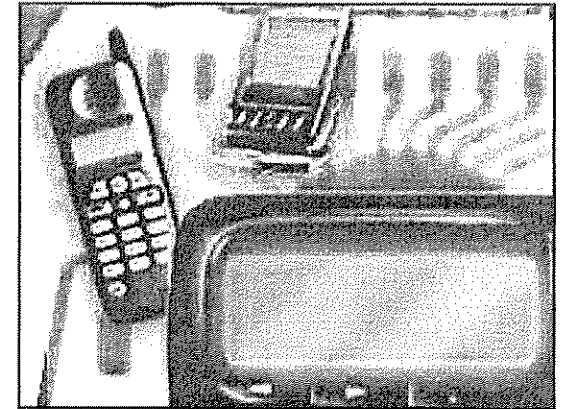
This is the way we identify lost or stolen items that are registered in our program.

We mark electronic devices in two places. Usually on the front or back and inside the device. This information is placed in our database along with your information.

We also record the devices serial number for added identification purposes.

In the event a device is lost or stolen, we will be able to give it to registered owners once recovered.

***CHOOSE WHERE  
YOU USE IT,  
IF YOU DON'T  
WANT TO LOSE IT!***



***REMEMBER...***

***OUT OF SIGHT***

***OUT OF MIND***

***PUT AWAY YOUR  
ELECTRONIC DEVICES  
BEFORE ENTERING  
THE SUBWAY SYSTEM***

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COURTESY  
PROFESSIONALISM  
RESPECT

**NYPD**



**RAYMOND W. KELLY**  
Police Commissioner

### **NYPD Operation I.D.**

Operation Identification is offered free of charge by the New York City Police Department and involves registering the serial number of valuable portable electronics along with the owners name and contact information. Items can also be engraved with a uniquely identifiable serial number prefaced with the letters N.Y.C.

Benefits from this program include:

- The marked property is more difficult for a thief to sell
- Stolen property in the possession of a thief is easily traceable to its rightful owner
- Should you be a victim of theft, registering your property with the NYPD could help bring about its return

### **Cell Phone Safety**

According to a recent study, Americans lost \$30 billion dollars worth of cell phones in 2011. While loss is more common than theft electronic devices are attractive targets for thieves due to their high resale value. Electronics such as cellular phones are the most common types of stolen property in New York City – even more than currency! - accounting for 81% of all electronic device thefts.

So what can you do? Remain alert and aware of your surroundings when using your device, don't leave your device unattended and always use the security features of your phone (pin lock, find my iPhone etc.).

### **Android Devices**

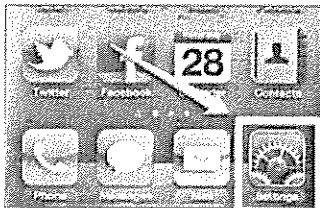
While Android devices do not have native features to assist in the recovery in the event of loss or theft, there are a variety of third party applications available for this purpose. The NYPD cannot specifically endorse any one application; however we encourage you to research and find one that is right for you!

### **iCloud / Find My iPhone**

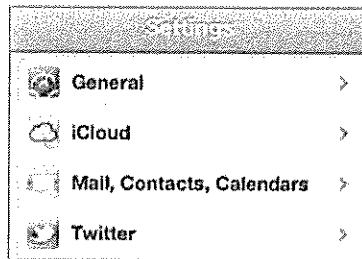
We ask that you take a moment to activate this important feature on all of your iOS devices by using the steps outlined in the section below. Additional instructions are available by visiting <http://www.apple.com/iCloud>

### **How to setup Find My iPhone**

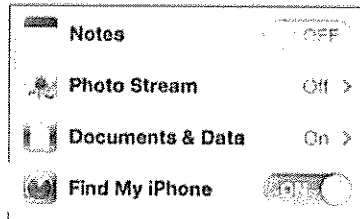
Go to Settings.



Scroll down and Select iCloud.



Once there Scroll to the bottom of your screen and then turn Find my iPhone to the ON Position. That's IT!



Please complete the form below, tear it off and return to the NYPD officers conducting the registration. Some information is optional, please ask if you have any questions.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Device Type: \_\_\_\_\_

Device Serial #: \_\_\_\_\_



**TESTIMONY OF THE  
INSTITUTE OF SCRAP RECYCLING INDUSTRIES  
NEW YORK CHAPTER  
TO THE NEW YORK CITY COUNCIL  
REGARDING INTRO 1177**

**NOVEMBER 18, 2013**

Good Afternoon. My name is Lawrence R. Schillinger. I represent the New York Chapter of the Institute of Scrap Recycling Industries. ISRI is a Wash. DC based national trade association representing processors and brokers of scrap commodities including ferrous and non-ferrous metals, paper fiber, plastic, rubber and electronics. More than 75 ISRI member companies comprise the ISRI-NY Chapter, ranging in size from family-owned businesses to multi-national corporations.

The scrap recycling industry is a sophisticated, capital-intensive industry that has been creating "green jobs" in the United States for decades. As the first link in the manufacturing supply chain, scrap recycling has been integral to the U.S. economy, job creation, resource sustainability, energy savings and global trade. Despite the sluggish economic recovery in the aftermath of the global recession, the U.S. scrap recycling industry rebounded from \$54 billion in sales in 2009 to more than \$90 billion in sales in 2012. (Source: Institute of Scrap Recycling Industries)

While the recovery in the U.S. labor market has been uneven, the scrap recycling industry has been at the forefront of job creation, adding more than 15,000 jobs to the economy since the beginning of 2010. In New York State the scrap recycling industry directly employs 7,640 people; accounts for 24,000 jobs through direct, indirect and induced impacts and adds more than \$ 5 Billion annually to the State's economy. (Source: John Dunham and Associates, 2012; Attachment 1).



High demand for metals such as copper and aluminum tend to encourage metal theft. Metal thieves remove wiring and piping from vacant homes, construction sites and utility property.

ISRI has been proactive on the issue of scrap metal theft, developing a nation-wide "Scrap Theft Alert" system in coordination with law enforcement authorities by which scrap processors within a 100 mile radius of a reported scrap metal theft are notified to be on the lookout for stolen scrap. (See: Attachment 2). This program has resulted in dozens of successful prosecutions.

ISRI-NY member scrap processors also have a long-history of cooperation with the NYPD, particularly at the precinct level. It is commonplace for a scrap processor to assist a detective or beat cop by providing direct access to records of scrap purchases which pursuant to State law must identify the scrap seller and describe the scrap material offered for sale.

ISRI-NY supports the proposed statutory requirement in Intro 1177 which would mandate the maintenance of electronic records for purchases of the materials specified in the proposed ordinance. There are also additional potential measures to consider which would deter and/or aid in the investigation of scrap theft incidents, such as a requirement that scrap processors possess the requisite equipment to take a photo or video image of either or both the scale and the point of transaction with the means to electronically archive such images for 60 or 90 days.

However, ISRI-NY strongly objects to the reference in Intro 1177 which authorizes a City agency to mandate the electronic upload of every transaction on a daily basis. ISRI contends that any such requirement - particularly to a third-party entity such as LEADS on Line - would be unduly intrusive, excessively burdensome and meaningless as an investigatory tool.

The coerced download of each and every transaction is tantamount to a commercial "Stop and Frisk" policy. Just as stopping and frisking people without cause or suspicion is based on the faulty premise that an intrusion on personal liberty is justified on the premise that doing so may possibly lead to an arrest, the same faulty rationale extends to the proposed mandatory upload; i.e. if a record of every transaction were to be uploaded, then maybe, just maybe, a reviewing agency may find something interesting, and never mind the burden and imposition on the commercial entity.

We estimate that there are at least 5,000 and perhaps as many as 10,000 transactions every day by NYC scrap processors which would need to be uploaded. These scrap purchases are based on and recorded by weight. A transactional record showing a purchase of "5 pounds of copper" or "10 pounds of computer electronics" or "50 pounds of mixed metal" provides no investigatory value. Moreover, it would be misguided to require and frankly impossible for a scrap processor to ever identify each piece of purchased material with specificity.

With all due respect, the idea of reporting every purchase of the specified materials every day with the hope of finding stolen goods is analogous to establishing a "Present Persons Bureau" which would have every person report in every day in order to determine who may be missing. That is why ISRI's Scrap Theft Alert system is so effective. And this crime-busting tool already exists: if local law enforcement agencies will report scrap theft to the Scrap Theft Alert system then our membership will be alerted immediately so that they can provide critical and timely assistance to apprehend the thieves.

Local law enforcement and regulatory agencies also need to do more to combat scrap material theft. The scrap industry's experience is that scrap metal theft is a low priority crime for the allocation of police resources. Additionally, we urge the Department of Consumer Affairs to step up its enforcement of the registration and recordkeeping requirements already on the books. Let's start enforcing the existing

laws before we add new regulatory burdens which will put NYC scrap processors at a competitive disadvantage relative to scrap processors in neighboring jurisdictions.

To this last point, ISRI has pushed for the enactment of State legislation to significantly increase criminal penalties for the crime of scrap theft by allowing for the aggregation of the value of the stolen material with the economic damage resulting from the theft. By doing so a criminal act which may otherwise result in two misdemeanor charges – such as petit larceny and criminal mischief -- would be elevated to a felony. ISRI has also advocated for the enactment of State legislation for State-wide licensure of scrap processors so that real tools will be forged to remove bad actors from the industry. We urge the Council and the Mayor's Office to support both of these state legislative initiatives.

ISRI New York scrap processors are eager to work with the City to develop meaningful and effective deterrents to scrap metal theft, and welcome the opportunity to host interested Councilmembers and staff on a tour of representative scrap processing facilities.

To recap, ISRI respectfully requests that Intro 1177 be amended to preclude the City's scrap processors from mandatory electronic reporting; however ISRI supports the proposed requirement for electronic record keeping. On behalf all ISRI NY Chapter members, we look forward to working cooperatively with the Department of Consumer Affairs, the NYPD and the Council to develop a meaningful and effective response to the issue of scrap metal theft. Thank you.

**Testimony of T&T Scrap, LLC  
To the New York City Council  
Regarding Intro 1177**

**November 18, 2013**

Good Afternoon. My name is Michael Powers. Thank you for opportunity to address you all today. I represent T&T Scrap, a scrap metal processor with two locations in Brooklyn and one location in Queens. We specialize in the purchasing, processing, and shipping of scrap metal for recycling. We recycle thousands of tons of scrap metal each year in the city of New York. We handle ferrous and non ferrous metals for recycling all over the world. We employ roughly 50 New York City residents and our customer base of thousands of New Yorkers extends to all boroughs of the city.

In regards to this proposed bill, T&T Scrap strongly supports the basis for which this bill is intended. However, we can not support this proposed legislation. As a company, we have invested in electronic records that surpass current city and state laws. We are in strong support of preventing theft of any type especially the theft of scrap metal. We work closely with, and have tremendous relationships with the NYPD. The NYPD knows that we maintain records of our customers and we willing participants in assisting with their investigations.

However, the type of electronic reporting that this legislation is proposing is impractical. Our company cannot upload every transaction to a third party or directly to the NYPD as it would be unduly burdensome for our company as well as impossible for the NYPD to continue constant surveillance of the information. We are in excess of 650 individual transactions per day and we are simply one do many companies within the industry.

Operationally, this will be difficult for a small growing company. Transmitting every transaction to a third party, absent an imminent threat of a violation of the law, will provide little assistance and simply bring small businesses to a grinding halt. The burden does not outweigh the benefit.

As it stands, the scrap processing industry is heavily regulated, and record keeping is already a requirement. Police have the ability, through cooperation of a private business or through the constitutional requirement of a warrant to obtain records. "Real time electronic surveillance" of our records by the police is not justified unless a suspected crime has been committed.

Our business, and the industry, do not condone nor want to purchase stolen goods. This is already illegal and is a poor business practice in that it

threatens to eradicate all of our hard work. Further regulation is not the answer to catching a thief. Enforcement of the existing laws and regulations is the answer. To place these burdensome regulations solely on the businesses that currently follow the regulations and laws in place is unfair.

In addition our industry now falls under the jurisdiction of the Department of Consumer Affairs - again as an example that we are regulated. To date, all scrap metal processors are required to hold a consumer affairs license, required to take copies of identification and, required to maintain records of transactions.

Thus, we support the current safeguards and enforcement of all scrap metal processors that remain the law as of today.

Further we would like to extend an invitation to any of the members of the committee to visit our facilities to see first hand how scrap metal processors operate and to truly review our record keeping process.

I thank the committee for the opportunity to speak and we look forward to working with you all to help thwart scrap metal theft.



**November 18, 2013**

**Testimony of Eric Modell  
President of the Collateral Loanbrokers Association of New York**

**New York City Department of Consumer Affairs**

**Oversight Hearing Int. No. 1177 – 2013**

**To Amend the Administrative Code of the City of New York  
In Relation to Electronic Records Requirements for Second-  
Hand Dealers, Scrap Processors and Pawnbrokers**

Good afternoon. My name is Eric Modell and I am the fourth generation President of a family-owned pawn broking business that has operated in New York City for 120 years, and I am also the President of the Collateral Loanbrokers' Association of New York (CLANY). CLANY has represented the interests of pawnbrokers, and our customers, for well over seventy-five years. A large majority of CLANY members operate in the five boroughs. CLANY members, almost without exception, offer pawn loans and operate as second-hand dealers from each of their stores. Accordingly, they are dually licensed as pawnbrokers and as second-hand dealers and would be significantly impacted by this law were it adopted. I am here to share our real world concerns regarding Int. No. 1177 and urge careful additional examination of the bill before the Committee elects to act on the measure.

The stated goal of the proposal is to assist the police in the recovery of stolen property. While this clearly is a worthwhile goal, the means set forth in the legislation are fundamentally and fatally flawed for the reasons set forth below.

In New York City to date the use of electronic reporting by pawnbrokers and second-hand dealers has been promoted via a campaign by the NYC Police Department to encourage voluntary use of L.E.A.D.S. Online (Leads). Leads is a private sector, for-profit entity, which acts as a servicing company on behalf of police and or other municipal agencies. Pawn loan and second-hand sales information is compiled from business records by Leads and made available to the New York City Police Department. The data collected is owned by Leads. Information includes property descriptions, loan amounts and personal identifying information regarding borrowers and sellers.

My own personal experience with Leads provides a striking example of what is wrong with the bill. For approximately six and a half years, I voluntarily used Leads at all my business locations. Unfortunately, as a result I came to learn how harmful it is when police agencies are given unlimited access to customer information.

I cite one example. A law-abiding customer of ours, who prefers to remain anonymous, had used our services for more than five years when she was subjected to the unintended consequences of Leads. During her time as a customer in my store, she regularly pledged and redeemed a single item of jewelry. Based upon the information furnished to the NYC Police Department by Leads, our customer was confronted regarding her loan activity which was unilaterally deemed to be suspicious by NYC Police Department personnel. No warrant or judicial oversight was secured before our customer was subjected to police scrutiny. In fact our customer was awakened in the middle of the night, confronted by two police officers at her home and interrogated regarding her recent loan transactions. The item that the officers were aggressively inquiring about was the same item she routinely pawned with us. She had done absolutely nothing wrong. Nevertheless, she was accosted in her home as if she



was engaged in a criminal enterprise. She was extremely upset that her private loan information had been transmitted to the police and outraged that her privacy could so easily be violated.

The blanket furnishing to law enforcement of personal information respecting borrowers and second-hand sellers, without a warrant, raises a substantial constitutional question respecting unauthorized searches and seizures under both the Federal and State Constitutions. The Fourth Amendment of the United States Constitution and Article I Section 12 of the New York State Constitution afford pawnbrokers, second-hand dealers and their customers' protections from unreasonable searches and seizures.<sup>1</sup>

Simply put, the adoption of an electronic reporting law is subject to constitutional limitations. Mandatory electronic reporting of pawn loan transaction information, and second-hand dealer buy/sell information, is designed to facilitate warrantless searches and accordingly is constitutionally impermissible in New York State. This proposal would permit customer information to be subject to the use of widespread fishing expeditions or dragnets which are the equivalent of an impermissible electronic stop and frisk law. The legislation does not contain a single provision which would protect against abuses including profiling of customers and the potential loss of key proprietary information belonging to the pawnbroker or second-hand dealer.

Arguably, under narrowly prescribed circumstances, municipalities may conduct warrantless administrative searches to insure that pawnbrokers and second-hand dealers are conducting business in accordance with lawful requirements, including the maintenance of appropriate transaction records. However, the use of blanket electronic reporting as required under Int. No. 1177 is not a legitimate means for insuring record compliance.

Notwithstanding the contention that the police will not misuse the electronic information gather pursuant to this legislation, CLANY, NPA, the ACLU and other interested parties all contend that the proposed law fails to meet constitutional safeguards. A careful reading of the New York State Court of Appeals rulings respecting warrantless governmental search substantiates that Int. No. 1177 cannot withstand constitutional scrutiny.

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<sup>1</sup> In addition to the constitutional issues which are the primary focus of my testimony today, electronic reporting raises a number of additional questions including, without limitation, questions pertaining to: improper profiling, the threat of improper disclosure, the misuse of proprietary information, and failure of the legislation to provide indemnification to pawnbrokers, second-hand dealers and consumers in the event of a breach of confidentiality or economic loss due to the misuse of proprietary or personal information. These concerns are the focus of a submittal by the National Pawnbrokers Association (NPA). CLANY and its membership concur with the objections raised by the NPA.

In essence, proponents of this law are saying that people can trust their government to do the right thing with the marshaled information. In response to just such an argument Judge Joseph Harris of the Albany County Supreme Court stated: "But the very enactment of the Constitution of the United States is a manifestation of the intent of the Founding Fathers to free the People from the need to rely upon the 'trust me' protestation of their government, which as often as not is unfounded. Or to put it another way – an ounce of constitutional right is worth a pound of good faith." (*Bourdeau et al. v. Curiale*, Albany County Supreme Court, 1991.)

The seminal case in New York respecting warrantless "administrative search" is *People v. Keta* (cited as *People v. Scott* 79 N.Y.2d 474; 593 N.E.2d 1328; 583 N.Y.S.2d 920; 1992 N.Y. LEXIS 940. Fundamentally *Keta* holds that the warrantless search of a vehicle dismantling business to determine whether such business is trafficking in stolen auto parts, and to recover stolen parts, is per se violative of Article I Section 12, of the New York State Constitution.

In *Keta* the police, without a warrant and using handheld computer scanners, obtained property identification information via the bar code on various automobile parts located on the premises of the business. The information was electronically cross referenced against lists of stolen property via a computer matching program. Upon finding some items of stolen property the business owner was charged with possession of stolen property. On appeal to New York's highest court all of the charges respecting the possession of stolen property were dismissed and the use of warrantless computer based data mining for stolen property found to be unconstitutional. Warrantless searches of the records of pawnbrokers and second-hand dealers, either at a merchant's business location or remotely via this proposed law, are proscribed under the New York State Constitution.

While some may argue that data mining of select businesses may prove to be an effective means for recovery of some items of stolen property, the effectiveness of these programs is by no means assured. Moreover, the cost of such a program measured in the loss of constitutional freedoms is simply too great. Innocent parties choosing to use a pawnbroker, or sell property to a second-hand dealer, pursuant to this proposal will have knowledge of these otherwise confidential transactions disclosed to governmental and non-governmental third parties causing potential personal, professional or financial harm. The ACLU recently testified against a proposal similar to Int. No. 1177 in the County of Albany, New York citing constitutional prohibitions against warrantless searches. (In Albany County the County Executive wisely vetoed the measure.) The ACLU and other interested parties should be afforded an opportunity to address this measure and a rush to judgment during the waning days of this legislative session should be avoided.

A December 8, 1998 NYC Police Department memorandum from George Grasso, Deputy Commissioner, Legal Matters, to Departmental personnel entitled "Guidelines for the Inspection of Pawnbrokers and Second-hand Dealer Business" contained the following statement:

Records maintain by pawnbrokers and second-hand dealer businesses are to be open to inspection by uniform members at all reasonable times (A.C. 20-273 d). Inspections of pawnbrokers and second-hand dealer businesses should be conducted only for the purpose of enforcing the Administrative Code regulations (i.e., licensing and record keeping requirements) pertaining to such pawnbrokers and second-hand dealers. **Such inspections should be designed to uncover administrative violations, not criminal activity.** (emphasis added)

It is beyond dispute that the NYC Police Department personnel have routinely been ignoring departmental guidelines and utilizing data obtained from Leads for the purpose of screening for property crimes in a fashion similar to the methodology employed in the *Kefa* case. Additionally, Leads information has routinely been used to profile borrowers and subject them to unwarranted intrusive and impermissible police practices. In the absence of meaningful procedural safeguards, consistent with a warrant requirement, or its equivalent, it belies common sense to suggest that just such constitutionally impermissible practices will not follow in the wake of mandatory electronic reporting by pawnbrokers and second-hand dealers as proposed by Int. No. 1177.

In addition to the loss of constitutionally guaranteed freedoms this proposal will be extremely costly to implement. Computer hardware and software will need to be updated at significant cost. Moreover, the bill authorizes the NYC Police Commissioner to require photographs of all property pawned or purchased to be furnished by pawnbrokers and second-hand dealers to the NYC Police Department. This requirement is labor intensive and will add a significant and ongoing expense for all licensees. All of the costs associated with this measure will likely be passed on to consumers while the recovery of stolen property is not likely to be significant.

An underlying supposition of the supporters of this legislation is that the presence of secondhand dealers and pawnbrokers in a region promotes burglaries "by giving criminals a place to dispose of stolen property". Both seizure statistics and a police study conducted in Charlotte, North Carolina, contradict this assumption. Utilizing a governmental grant, the Charlotte-Mecklenburg Police Department studied a variety of policing issues including the relationship between pawnbrokers and burglaries. The study was designed to examine the activities and behavior of individuals who frequently pawned multiple items. Police believed the study was vital both to the recovery of stolen merchandise and to the investigation of crimes such as burglary, robbery and larceny.

Notwithstanding the author's presupposition, the study did not demonstrate the expected correlation. Known criminals do not "fence" goods with pawnbrokers. There are numerous non-regulated outlets such as flea markets, garage sales and eBay to name only a few, all of which have little to no record keeping or reporting requirements, and as such seem to be a more reasonable outlet for a thief to (attempt to) sell stolen property.

It is respectfully requested that this legislation be held for all of the reasons set forth above. In the event that this proposal moves forward in spite of the arguments put forth herein, we respectfully request that the effective date be postponed to 180 days after it is adopted, as it would require substantial time and effort to implement these rules.

Respectfully submitted,

Eric Modell  
President  
Collateral Loanbrokers Association of New York  
350 Northern Blvd. Suite 306  
Albany, New York 12204



National Pawnbrokers Association®

**Statement of Jordan Tabach-Bank on behalf of the National Pawnbrokers Association Before the Committee on Consumer Protection, City Council of the City of New York**

**November 18, 2013**

My name is Jordan Tabach-Bank. I am a pawnbroker in New York City and a director of the National Pawnbrokers Association (NPA). I have included as an attachment to this statement a brief biographical sketch about my business and my work with the NPA. As the only nationwide trade association that represents the pawn industry and its independent pawnbroker members, the NPA appreciates this opportunity to submit comments on Int. No. 1177, which we strongly oppose. I ask that the Committee include this written statement in the record for this hearing, as well as my oral testimony.

The NPA opposes Int. No. 1177 for numerous reasons, including, but not limited to, the following:

- i. It is based on the empirically unfounded and offensive notion that pawnbrokers are fences for stolen property and that their customers are thieves.
- ii. It violates consumers' rights to due process of law.
- iii. It violates consumers' rights to privacy.
- iv. It results in impermissible profiling to include the age, gender, ethnicity, and zip code of residence, as well as the nature of the goods exchanged and amount of proceeds obtained by consumers.
- v. It offers no meaningful protection to consumers or pawnbrokers against the likely abuse of confidential, proprietary, personal and financial data.
- vi. It enriches unrelated 3<sup>rd</sup> party for-profit software companies at considerable expense to consumers and pawnbrokers.
- vii. It provides a marginal benefit to law enforcement at best.

This Committee cannot, in good conscience, endorse a regulatory framework that is so lacking in important protections for consumers and businesses as is Int. No. 1177. We believe that Committee members should not vote to report out Int. No. 1177, and urge Committee members not to vote for its adoption in the City Council. We urge an appropriate period of time to study the draft, and consider the arguments made in this prepared statement and in the testimony from business representatives and consumers about the unconstitutional effects of Int. No. 1177. The NPA will now direct your attention to additional detail with respect to the issues outlined above that make Int. No. 1177 bad public policy.

i. Int. No. 1177 is based on the misguided and offensive notion that pawnbrokers are fences for stolen property and that their customers are thieves.

Our members are independently owned providers of consumer financial services and products. Many of them operate family-owned businesses that have been in continuous operation for decades, and, in several instances, for over 100 years. These businesses play a vital role in our communities by serving hundreds of thousands of unbanked and underbanked consumers that do not have access to alternative consumer financial services and products, as well as those consumers that simply prefer the financial services and products offered by our members. The proposed legislation appears to be based on the longstanding but misguided notion that pawnbrokers commonly deal in stolen goods and that their customers are reprobates. This is a demonstrably faulty premise and an exceedingly poor justification for the invasion of consumers' rights to privacy and to due process of law.

Numerous studies reflect the need for pawn shops and the falsity of the notion that pawnbrokers and their customers routinely traffic in stolen goods. The outdated stereotypes about pawn transactions and pawn consumers, including bias against pawn consumers and pawnbrokers on the part of law enforcement officers, fail to consider that:

- a. Pawnshops are highly regulated and therefore a terrible place to attempt to liquidate stolen property. In fact, the incidence of stolen items in pawnshops nationwide is **less than 1/10 of 1% (or less than 0.001)**. This results from the longstanding record keeping requirements imposed by New York and other states with respect to obtaining personal identification from all customers. Simply put, thieves know (or quickly learn) that they will be caught if they frequent pawnshops with stolen property, so they opt to sell such property via eBay, Craigslist, flea markets, and other unregulated options that do not result in their being personally identified. Pawnbrokers are also incentivized to avoid suspicious transactions in that they must return stolen goods to the rightful owner and in the vast preponderance of cases must do so without recompense. Given the likelihood that thieves will be caught and that pawnbrokers will incur a loss, very few stolen items are brought to pawnshops.
- b. Pawn clientele are largely respectable consumers that are unable to obtain alternative credit, prefer pawn loans to alternative credit resources (notwithstanding their availability), wish to liquidate personal property with a minimum of effort, or whose cultural roots are associated with a general distrust of banks. Many consumers re-use the same item of collateral for one or more loans a year over many years, such as those of East Indian descent who may own fine gold bracelets (a common method of storing value in that culture). Others are business owners, including diamond traders whose families have been in business in New York City for decades with impeccable business reputations who need funds for new inventory, or construction company owners who must make payroll even if their own clients, large or small, public and private, have not yet paid them for work performed. Others have medical emergencies not covered by insurance or even funeral expenses to pay. Since the Financial Crisis of 2008 many more upper and middle

class consumers—individuals or owners of small businesses trying to make payroll—have turned to pawnbrokers to obtain credit they cannot obtain as quickly or easily from depository institutions. There is nothing suspect in these motivations and it is inappropriate and offensive to treat them as though there were.

- c. There is simply no meaningful difference between consumers utilizing the lending services of a pawnbroker than those of us who use the same credit card to obtain an advance. Consider that pawn loans and credit card transactions share some common traits - both are short term loans and the consumer needs to pay each of them off or extend them before the end of the term. Even though there are literally millions of cases each year of identity theft and fraud involving credit cards, there is no requirement that the card holder submit to the automatic transfer of sensitive non-public personal information and other transaction-specific details to private, for-profit, third-party vendors as Int. No. 1177 proposes should be applicable to pawn transactions. Would New York consumers be willing to assist in reducing identity theft and fraud by allowing personal information to be sent to law enforcement and private, for-profit, third-party companies each time a credit card is used? Would New York consumers be willing to have the details of their purchases sent electronically to law enforcement and private, for-profit, third-party companies? If this esteemed Committee cannot truthfully answer these questions in the affirmative, then it should not be prepared to further this legislation without admitting its unfounded discriminatory bias against pawnbrokers and their customers.

ii. Int. No. 1177 violates consumers' rights to due process of law.

Consumers who utilize pawn transactions to meet short-term credit needs are entitled to federal due process rights that Int. No. 1177 infringes upon. These due process rights include a presumption of innocence, freedom from warrantless and threshold-less police dragnets, freedom from profiling and ongoing surveillance, and more. The federal district court for the Southern District of New York has recognized that these rights are guaranteed to residents of New York City, *Floyd v. City of New York*, 08 Civ. 1034 SAS (Aug. 12, 2013). It also would violate pawnbrokers' rights to due process, including duly authorized search warrants or grand jury subpoenas for access to their proprietary business records.

Int. No. 1177 is deeply flawed in terms of these due process rights, as it relies on generalized non-specific suspicions about every consumer who obtains credit from a pawnbroker – in effect, a form of guilt by association in which every pawn consumer is a proper suspect of some wrongdoing. This Committee, and the entire City Council, in their capacity as representatives of all the people, should reject this assumption.

iii. Int. No. 1177 violates consumers' rights to privacy.

Pawn transactions are “consumer financial products or services” fully protected by Title V (Consumer Financial Privacy) of the federal Gramm-Leach Bliley Financial Services Modernization Act of 1999 (GLBA) and regulations promulgated under it by federal bank regulatory agencies as well as the Federal Trade Commission (FTC) and the Securities and

Exchange Commission. Both this federal statute and the associated regulations preempt local action that provides less consumer financial privacy protection for consumers. Ordinance amendments such as Int. No. 1177 deprive consumers of federal financial privacy rights to which they are entitled under GLBA's Title V and the federal regulations that implement it.

Int. No. 1177 also substitutes wholesale, 100% reporting of consumer transactions for duly authorized search warrants or grand jury subpoenas that the GLBA requires.<sup>1</sup> It also subjects only certain classes of providers of consumer financial services or products—pawnbrokers and secondhand dealers—to wholesale, suspicion-less, localized electronic transaction reporting under these draft amendments.

iv. Int. No. 1177 results in impermissible profiling to include the age, gender, ethnicity, and zip code of residence, as well as the nature of the goods exchanged and amount of proceeds obtained by consumers.

The NPA appreciates the fact that Int. No. 1177 has been referred to the Committee on Consumer Protection because we expect that this Committee will undertake the serious scrutiny it deserves. Int. No. 1177 is clearly not a pro-consumer-protection set of amendments. The “consumer protection” quotient of Int. No. 1177 is unbearably low, and its unconstitutional pro-consumer-profiling quotient is impermissibly high. Indeed, Int. No. 1177 would allow the City to collect personally identifiable information about the millions of consumers’ transactions that utilize one or more of the classes of businesses covered, as well as other details about what consumers use as collateral or sell, and the amounts they obtain from licensed businesses, including pawnbrokers. These data will allow very targeted profiling to include the age, gender, ethnicity, and zip code of residence, as well as the nature of the goods exchanged and amount of proceeds obtained by consumers who engage with licensed pawnbrokers and licensed second-hand dealers – in presumptively lawful transactions. It also requires private businesses to transfer these sensitive transaction data to a third-party, for-profit, vendor – perhaps even one out of the state or out of the country – without compensation to those businesses and with huge potential profit opportunities for the lucky vendor.

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<sup>1</sup> GLBA sets up a scheme under which the transaction records of private providers of consumer financial services and products that contain consumers’ non-public personal information (names, dates of birth, home addresses, identification document numbers, and ethnicity) may not be shared with governments or third parties except in the precise situations afforded by its own provisions. Relevant exceptions to the rule against the availability of transaction records are in GLBA’s Section 502. Two of that section’s provisions allow for certain access, but not the wholesale collection of the non-public personal information that Int. No. 1177 would allow. The first of these provisions is subsection 502(e)(5), which allows regulatory bodies to obtain records for the purposes of examining the providers’ compliance with the law—not for the purpose of determining whether the consumer has violated any law. The second is subsection 502(e)(8) that allows access to the transaction records only following a duly authorized court warrant or a grand jury subpoena, regardless of whether the applicant for access is a government agency or an individual or business. It does not allow access using the lesser “reasonable suspicion” standard used in ordinary law enforcement work. Subsections 502(e)(5) and (e)(8), taken together, are consistent with the approach taken in *People v. Kete*, (cited in *People v. Scott*, 79 N.Y. 2d 474; 593 N.E. 2d 1328; 583 N.Y.S. 2d 920 (1992) in New York State and produce the following rule: no federal, state or local government agency can subvert ordinary due process by collecting consumer financial transaction records in a wholesale, threshold-less “transaction reporting” scheme if the purpose is to identify wrongdoing by the consumer involved. Moreover, a separate provision of GLBA, Section 521, governs access by government agencies to consumers’ financial transaction records in connection with child support obligation determinations and enforcement. It has highly specific procedural requirements with which a program such as Int. No. 1177 would not comply. These three GLBA provisions do not apply a balancing test in which claimed government “efficiency” or needs outweigh consumers’ federal financial privacy rights. They provide statutory financial privacy rights entitled to the supremacy of federal actions. Their reach is not limited to requests by federal agencies, as is true in the federal Right to Financial Privacy Act of 1978. GLBA applies to all governments, and all private parties seeking to obtain access to consumers’ financial records.



v. Int. No. 1177 offers no meaningful protection to consumers or pawnbrokers against the likely abuse of confidential, proprietary, financial data.

Int. No. 1177 places consumers' non-public personal information in the hands of a for-profit, third-party vendor who owes them no duty to protect the information from misuse and interception by those who would commit identity theft or, indeed, property crimes (including burglary based on their awareness of the consumer's collateral and/or recent infusion of cash).

Also, there is a complete lack of meaningful contractual protections for the pawnbroker for liability created by the vendor's behavior (for example, for data security breaches or misuse by vendor employees), and no means of negotiating with the designated vendor for better data protection or indemnification from liability. And pawnbrokers will face substantial liability for any data security breaches, which are likely given the use of an electronic transaction reporting system in which the initial data transmission is not encrypted. Sensitive, non-public personal information about consumers that pawnbrokers would be required to upload in unencrypted form over ordinary telecommunications lines to this private, for-profit, third-party vendor could be relatively easily intercepted and misused. It provides little comfort that the vendor promises to store data it receives in encrypted form if the original transfer is completely unprotected.

The NPA has reached out to the third-party, for-profit database vendors that market their pawn transaction information gathering products to law enforcement agencies and municipalities with an extensive list of questions that due diligence would require prior to entering into a business arrangement between two private parties. None of these companies have responded, or have indicated any reason for not entering into a dialogue with the NPA. It certainly makes one wonder about their reluctance to discuss their products, operating procedures, data security methods, indemnification, liability factors -- and the list of concerns goes on. At least one of the for-profit vendors that markets pawn profiling software to law enforcement agencies claims to become the OWNER of the data it receives with claims greater than those of the business that generated the data.

vi. Int. No. 1177 will enrich a third-party, for-profit software vendor at considerable cost to consumers and expense to pawnbrokers.

The reporting may cloud background checks of pawn consumers who are required to qualify, maintain employment or obtain a promotion. Further, there is significant risk of data interception and misuse, including identity theft and extortion.

The monetary costs associated with implementation of Int. No. 1177 would include staff time and extensive new equipment (many New York pawnbrokers do not use computers at present) and software. It also gives rise to the prospect that local government regulations, as opposed to statewide solutions, will impose non-uniform business requirements and costs on licensed providers who have business locations in more than one community within the state.

It entails loss to a private, for-profit, third-party vendor of otherwise confidential customer lists and other proprietary information about their businesses, including geographic market area, current and potential inventory, total loan and purchase volumes, and the types of advances

they are prepared to make for certain goods. This loss will amount to a taking by the government without compensation if the Council adopts Int. No. 1177.

vii. Int. No. 1177 provides a marginal benefit to law enforcement at best.

Int. No. 1177 reflects a refusal to acknowledge that the information the NYPD may require to investigate actual cases of theft or commission of crime is already available in records that the State of New York and the City, both of which currently require pawnbrokers to collect and maintain for periods of years. It also reflects a tendency to see technology as the solution to all law enforcement needs and an overstatement of the potential for or actual recovery of stolen property from pawnshops through its use. Despite the low probability of finding stolen property or property that was used in the commission of a crime in a pawnshop, Int. No. 1177 would require data collection—and allow indefinite retention by a for-profit, third-party, out-of-state vendor—of pawn transaction records and enable ongoing profiling of 100% of pawn consumers. For such miniscule numbers of stolen items, the sweep of law enforcement and vendor access to sensitive non-public personal information is simply too great.

Neither law enforcement agencies nor their vendor of choice should have electronic access to pawn consumers' non-public personal information if actual suspicion is not attached to an item or individual because of the record-keeping and record-retention responsibilities that pawnbrokers as licensees already have under New York State and City laws.

### Conclusion

In conclusion, the NPA urges this Committee to study the constitutional concerns that Int. No. 1177 presents and, subsequently, to reject it for the reasons we have articulated. Consumers using pawn transactions should not be denied the federal financial privacy protections that GLBA affords to consumers who frequent banks, credit unions, securities brokers, and automobile lenders for their credit needs. Pawn consumers should not be subjected to profiling by the City of New York on the basis of their age, gender, ethnicity, or the zip code in which they reside. You would not want your retail purchases, auto leases, or ATM withdrawals shared with the NYPD in the absence of some suspicion of wrongdoing, would you? If not, don't impose this same profiling risk on your fellow New York City residents. Consumers who use *other* second-hand dealers also should not be denied their New York State rights as articulated in the reasoning in the *Kete* decision cited in the CLANY testimony, and recently cited with approval by the New York State Court of Appeals in another decision.

Int. No. 1177 would deny all consumers who do business with licensees in the second-hand goods and collateralized loan industries the basic federal and state constitutional and federal statutory and regulatory rights that every consumer should enjoy. It would subject consumers to the greater risks of identity theft and data misuse that are inherent with all electronic transaction reporting of sensitive, non-public personally identifiable information, and particularly reporting to a private, for-profit third-party vendor occurring without encryption during transmission or other suitable protections. The anti-small business features of Int. No. 1177 are further reasons why these amendments should not be reported out or adopted by New York City.

This is not to suggest that the NYPD will not receive the same level of cooperation it has received historically from pawnbrokers operating within the City's boundaries if the Committee and the City Council reject Int. No. 1177. Pawnbrokers are not antagonistic to law enforcement. On the contrary, New York City pawnbrokers rely on law enforcement just like other New Yorkers. They observe requests for information validly authorized; place items on "police hold" while determination of involvement in a crime is pending; and they communicate suspicion to the NYPD if they suspect an individual whose provenance for an item is less than it should be. These are all proper and conscious steps for New York City licensees to take. Just do not ask us to participate in so significant a breach of constitutional due process and federal financial privacy rights as Int. No. 1177 would cause.

In short, Int. No. 1177 is based on a faulty and offensive premise, attempts to solve a problem that does not exist (while creating many others), and strips away the constitutionally protected rights of New York City's consumers and pawnbrokers in order to do so. This Committee should treat it accordingly. Thank you for the opportunity to appear today and share our grave concerns.



National Pawnbrokers Association\*

## Best Practices for the Pawn Industry

### Pawnbrokers Should Strive For The Following:

1. **Enhance Pawn Image.** Members should protect the professional image of the pawn industry by maintaining reputable stores that enhance and promote a favorable representation of all pawnbrokers. Members should employ professional staff and keep their stores updated, clean, and brightly lit to sustain the evolution of the pawn industry.
2. **Business Practices.** Members should conduct business with the highest level of integrity. They should attentively interact with the general public by offering superb customer service and quality merchandise.
3. **Promote Responsible Borrowing.** Members should encourage customers to use pawn services responsibly, by working with them to encourage repayment of their pawn loans and reclaim their pledged property.
4. **Stolen Property.** Members should avoid the acceptance of stolen property by refusing any items that are suspicious in nature or thought to be misappropriated.
5. **Law Enforcement.** Members should work closely with law enforcement officials to help ensure the safety of their respective communities while encouraging respect for the financial privacy rights of their customers.
6. **Satisfaction Guarantee.** Members should back their quality merchandise by offering retail customers a fair satisfaction-guaranteed program.
7. **Display NPA Membership Seal.** Members should notably display the NPA seal in their stores to signify their affiliation with the organization and commitment to these Best Practices.
8. **Support Balanced Legislation.** Members should take an active role in public policy, and be amenable to working with lawmakers and regulators to support legislation that will enhance the products and services offered by pawnbrokers.
9. **Accountability.** Members should monitor other member businesses and hold them accountable for following these Best Practices.
10. **Laws & Regulations.** Members should comply with all federal, state, local laws, and regulations related to the pawn industry.

Pawnbrokers are licensed and regulated by local, state, and federal (Federal Trade Commission, Bureau of Alcohol Tobacco, Firearms and Explosives, and the Treasury Department) authorities and must abide by:

- Truth in Lending Act
- Equal Credit Opportunity Act
- Fair Credit Reporting Act
- Patriot Act
- Federal Trade Commission Rules on Marketing and Data Privacy and Security
- Federal Firearms Laws and Regulations (for stores dealing in firearms)
- State laws
- Local ordinances

The best practices presented in this document are general in nature. NPA members should not use the contents of this document in lieu of legal advice from qualified local counsel in their respective jurisdictions because state or local laws may create additional or different compliance responsibilities.



National Pawnbrokers Association\*

## Data Security for Secondhand Dealers

No business should be held responsible for breaches of information security that it did not commit.

Businesses or persons engaged in interstate commerce and in possession of electronic data containing personal information include those who purchase used goods, take used goods in trade for other merchandise, or handle consignments for consumers. For example, these businesses or persons may include jewelry stores, Internet auction drop-off sites, pawnbrokers, or sporting goods, music, or electronics stores. Consumers who sell or consign to – or trade with – any of these businesses should be protected against data security breaches.

Nearly all commercial businesses are required to provide information about certain types of consumer transactions pursuant to federal, state, and local laws directly to government agencies or to their third-party agents. Increasingly, many secondhand businesses, in particular pawnbrokers, are receiving requests or are being required to provide records of consumer transactions in electronic formats. These transaction records include the consumer's name, address, race, date of birth, driver's license number, eye/hair color, height, weight, plus in some states and localities, a biometric identifier and/or photograph. This sensitive personally identifiable information (also called non-public personal information) is protected by Title V of the Gramm-Leach-Bliley Act of 1999, as well as other federal regulations, and is governed by state data security breach laws. Transaction records also include non-sensitive information such as the date, time and location of the transaction, a description of the personal property, a serial number, and any other identifying markings, if available.

To the extent that transaction records or information derived from them are required by law to be reported or are subject to requests or subpoenas by government agencies, businesses who report or respond to government requests and subpoenas should not be responsible for any data security breach that occurs after they dispatch transaction records to government agencies or their third-party agents requiring them. The necessity to protect these businesses from data security breach liability is even greater where the government agency requiring or requesting data in electronic formats does not allow the data to be transferred in a manner that ensures the security and confidentiality of the personal information.

A balanced solution can be found that protects the transaction records of secondhand businesses and their customers against liability from data breaches that government agencies and their contractors suffer. Any federal data security legislation should include protection for these businesses from liability to their customers when they are requested or required to share the sensitive personal information of customers with government agencies or their agents.

**Contact:** Cliff Andrews, CapCity Advocates, LLC [cliff@capcityadvocates.com](mailto:cliff@capcityadvocates.com)

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National Pawnbrokers Association

## Top Concerns with Electronic Reporting of Customers Personal Information

June 2013

NPA members frequently ask for talking points on electronic reporting of pawn consumers' personal information to law enforcement that they can use in discussions with these agencies, elected officials, and their lawyers. This document mentions the concerns most often identified.

Electronic reporting of transactions when consumers' personal information is included allows:

1. The ability to obtain and search customers' pawn information with no warrants, probable cause, or any degree of specific wrongdoing on the customer's part;
2. The use of demographic information from pawn transactions, such as age, gender, race, zip code, or the frequency of transactions with individual consumers, to profile customers;
3. The co-mingling of pawn transaction data with law enforcement criminal databases, which affords accessibility from remote devices such as squad cars and laptop computers;
4. The absence of meaningful limitations on the uses of pawn transaction data by law enforcement agencies or by third-party contractors they hire to assist with data collection, storage, and retrieval, or on the length of time that records may be maintained; and,
5. The prospect that customers' pawn transaction histories will be reported by law enforcement agencies to potential employers or credit agencies thus resulting in the loss or inability to obtain jobs.

Additional concerns that pawnbrokers have with electronic transaction reports that include customers' personal information are:

1. The jurisdiction in which data collected is stored (in-state, out-of-state or out of the country) and the respective privacy protections;
2. The absence of protections for pawnbrokers (including indemnification, insurance, and a safe harbor from liability to individual customers) if a data security breach occurs while it is in the possession of a law enforcement agency or its third-party agent;
3. The "taking" of or interference with proprietary business assets of pawnbrokers that consist of dollar amounts and terms of transactions, the type of property securing a loan transaction or purchase, and the names and contact information of every pawnbroker's customers, particularly in jurisdictions that employ third-party vendors to collect and store the data;
4. Claims by at least one vendor that markets pawn transaction data collection and reporting services to law enforcement that the vendor – not the pawnbroker from whom the data comes or the law enforcement agency that hired the vendor – becomes the "owner" of all data transferred to its custody and control. Thus, there may be no right for the pawnbroker or the law enforcement agency to retrieve the data if a change of vendors occurs or the vendor misuses the data; and,
5. The failure of state or local ordinances to require that transaction data be purged by law enforcement agencies or their vendors in a manner complying with or comparable to the federal Fair Credit Reporting Act.

062113LN

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/18/13

(PLEASE PRINT)

Name: Asst. Comm. Ricky Wong

Address: 42 Broadway NYC

I represent: Dept. of Consumer Affairs

Address: 42 Broadway NYC

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1177 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/18/13

(PLEASE PRINT)

Name: Lawrence Schillingor

Address: 5 Palisades Dr. Ste. 300 Albany NY 12205

I represent: Institute of Scrap Recycling Industries

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1177 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/18/2013

(PLEASE PRINT)

Name: PAUL SACCA ESQ

Address: EMPIRE STATE BLDG, 4400 NY NY

I represent: NY PAWN BROKERS / 2ND HAND DEALERS ASSOC NY

Address: 5 B PAVN, 6EM PAWNBROKERS, EZ PAVN

QUICK CASH  
Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/18/13

(PLEASE PRINT)

Name: Dep. Comm. John Bilich

Address: 1 Police Plaza

I represent: NYPD Dep. Comm., Operations

Address: 1 Police Plaza

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1177 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11-18-13

(PLEASE PRINT)

Name: Eric Modell

Address: 21 West 47<sup>th</sup>, Suite 500, NY NY 10036

I represent: Collateral Loanbrokers Association of NY

Address: 350 Northern Blvd, Albany, NY 12204  
Suite 306

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1177 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 11/18/13

(PLEASE PRINT)

Name: Jordan Talach-Bark

Address: 50 W. 47<sup>th</sup> St NY NY 10036

I represent: National Pawnbrokers Association

Address: \_\_\_\_\_



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: *Inspector* (PLEASE PRINT)  
*Dermot Shea*

Address: *Operations - NYPD*

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
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Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

Name: *Commissioner John B. Kelly* (PLEASE PRINT)

Address: *Dep. Comm. Operations - NYPD*

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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in favor  in opposition

Date: 11/18/13

(PLEASE PRINT)

Name: Michael Powers

Address: 201 E. 87<sup>th</sup> Apt 19J, NY NY

I represent: T+T Scrap

Address: 340 Maspeth Ave Brooklyn NY 11211

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Susan Petru

Address: Asst. Comm. Intergovernmental Affairs - NYPD

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms