

Beware: Internet Background Checks Have Risks

By Holly Culhane, Contributing Columnist



The Internet is often referred to as a “gold mine” of information. But employers need to be cautious when exploring its rich veins. Some nuggets you find can turn out to be fool’s gold. And from time to time, you just might pick up a piece of dynamite that will explode in your face.

A Santa Barbara-based start-up firm that trolls the Internet for nuggets of information on job applicants has caught the attention of employers, as well as two powerful U.S. senators, who are marshalling their investigative forces to insure that the company is not trampling on people’s privacy rights.

Employers’ use of the company Social Intelligence to “scrape” the Internet – particularly social networking sites – for background information on jobseekers has raised alarm bells with government regulators.

Recently, the Federal Trade Commission reviewed the firm’s operating practices, which include innovative “deep search” mechanisms, and concluded that it is in compliance with the Fair Credit Reporting Act, which generally prohibits reporting agencies from investigating job applicants without their permission. The law also requires that jobseekers be given a chance to respond to disputed information.

But that has not quieted the criticism. Democratic Sens. Richard Blumenthal of Connecticut and Al Franken of Minnesota, both congressional privacy advocates, recently sent the firm a letter demanding to know how it collects and distributes its information.

The senators want to know if websites’ “terms of service” are being violated to harvest background information and if “inappropriate” information is being fed to employers about jobseekers.

And therein lies the rub. Even if a thorough, sophisticated search of the Internet can reveal a ton of “personal” information about someone – including their age, gender and religion – that may not be appropriately used by employers in their hiring decisions.

The following is a good rule of thumb for any company doing an online background check – whether it’s being done by in-house staff using a basic Google search, or if a human resources consultant or Internet “detectives” are hired:

If you can't ask a question during a job interview, you can't dredge up the same information during an Internet search and use it in a hiring decision.

The law prohibits discrimination on the basis of a number of areas including age, sex, religion, sexual orientation, marital status, disability, gender identity, national origin, and military status – just to name a few – and it's illegal to rely on information in these areas no matter how the information was obtained. If a pattern can be proven that a company is discriminating in its hiring based on an applicant's gender or age, for example, costly civil and regulatory penalties might result.

There is a fine line between what you can discover about a jobseeker and what you can use in the hiring process. The Internet software and sophisticated processes that are being developed seem to imply that there is almost no limit to the information you can collect.

With the right programs and skills, you can find nearly anything a person has said or done online. We're not just talking about Facebook, Twitter, MySpace and LinkedIn postings. We're talking about deep searches on sharing sites such as Flickr, Picasa, Yfrog and Photobucket, and postings on Craigslist, YouTube and Tumblr. Blogging sites, Yahoo user groups, bulletin boards and e-commerce sites also can be trolled.

Scooped up will be text, photos, videos and maybe even emails you posted. Photos "tagged" by friends and comments made about you – on blogs or other "public" forums – also may be discovered on the Internet with little effort. Thorough Internet background investigations may reveal a jobseeker's past racist or anti-Semitic remarks, for example.

Social Intelligence's Chief Executive Officer Max Drucker told reporters in response to recent stories about the congressional inquiry that his investigations have found such tidbits as an applicant who was looking for OxyContin on Craigslist, a photo of a woman posing naked on a photo-sharing site and a photo of a man standing in a greenhouse filled with marijuana plants.

Considering a jobseeker's behavior and attitudes – such as those reflected in racist postings – may be "fair game" in the hiring process.

Drucker defended his company's procedures by noting that jobseekers must first consent to an online background check before an investigation is conducted. Applicants also are given the chance to respond to negative information. He said he also removes from his background reports inappropriate information that could expose a company to accusations that it is discriminating in its hiring practices.

The Internet is a powerful tool. Companies are advised to take great care when using it for background checking.

Whether an Internet background investigation is conducted by a company's staff, a background check company, or a human resources consultant, procedures should be in place that:

- First obtains a job applicant's written permission to conduct the investigation.
- Removes "inappropriate" information that may taint hiring decisions and prevents decision makers from knowing the information.
- Encourages thoughtful consideration of the information obtained during the Internet search. Ask yourself: Is the information accurate? Is there an explanation? Is this something I need to know in the hiring process?
- Insures compliance with Federal and State law regarding background investigations.

Jobseekers today should expect that employers will conduct an online background check.

- Be proactive. Do your own background checking first. If you find something that can be taken out of context, remove it from the websites you control. Don't just look at Facebook. Look at Craigslist, LinkedIn, blogs, forums, file sharing sites, etc.
- Don't post anything online that you don't want an employer to see. Tell friends to be cautious about their postings.
- Frequently check your privacy settings. Changes to popular social networking sites may result in your "private" information being not so "private."
- If you have serious concerns, Internet companies exist that may be able to help repair your online image problems.

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