



For your information

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## FTC Takes on Social Media Screening

Employers often rely on consumer reporting agencies to conduct credit and other background checks on candidates for employment. In the past few years, many employers and consumer reporting agencies began using information obtained via social media to screen job applicants. In its first enforcement action to address the sale of Internet and social media data for that purpose, the Federal Trade Commission (FTC) took the position that social media reports are “consumer” reports covered by the Fair Credit Reporting Act (FCRA). Employers that use data collected from social networking sites in making hiring or other employment-related decisions should review their policies and practices, as well as those of their background check providers, for compliance with the FCRA’s requirements.

### Background

Background screening can entail the use of information from various sources, including credit reports, employment history, criminal records, and even social media. Companies that report consumer information to employers and employers that use those reports in making hiring and other employment decisions must comply with the FCRA. The FTC and the Consumer Financial Protection Bureau share authority to enforce the law’s provisions.

The FCRA generally protects the privacy and accuracy of information bearing on an individual’s “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or is expected to be used” as a factor in establishing the individual’s eligibility for employment. Among other things, the law requires consumer reporting agencies to take reasonable steps to ensure the accuracy of the information they report and to provide notices to users of its reports regarding users’ obligations, including the obligation to provide employees or applicants with notice of any adverse action taken on the basis of the reports.

In the age of Facebook, Twitter, and YouTube, the ways in which employers and the screening companies they employ access and use social media information in making employment decisions is increasingly under scrutiny. (See our August 20, 2012 [For Your Information](#).) Recently, the FTC [settled](#) its first enforcement action addressing the sale of Internet and social media data for employment screening.

## *U.S. v. Spokeo, Inc.*

Spokeo, Inc. is a data broker that collects and assembles personal consumer information from “hundreds of online and offline sources,” including social networking sites. Using this information, it creates detailed personal profiles containing such information as the individual’s address, phone number, marital status, age, and email address, as well as hobbies, ethnicity, religion, social media use, and photographs.

The FTC [alleged](#) that Spokeo marketed the profiles to human resource professionals, recruiters, and others as an employment screening tool and, from 2008 until 2010, provided profiles to businesses on a subscription basis without taking steps required under the FCRA. According to the FTC, Spokeo changed its website Terms of Service in 2010 to state that it is not a consumer reporting agency and that neither its website nor its information could be used for FCRA-covered purposes, but it did not revoke access to existing subscribers that used its reports for employment purposes.

Specifically, the FTC charged that Spokeo violated the FCRA by:

- Furnishing consumer reports to persons who did not have a permissible purpose to receive them
- Failing to ensure the accuracy of its reports
- Failing to provide the User Notice required by the FCRA to those who purchased its reports.

The FTC also charged Spokeo with deceptive trade practices with respect to misleading “endorsements” of its services on websites and blogs. Recently, Spokeo [agreed](#) to pay \$800,000 to settle the FTC’s charges.

The case against Spokeo signals the FTC’s commitment to apply the FCRA when a consumer reporting agency furnishes information collected from social networking sites that an employer uses in making employment decisions. Thus, companies that use social media reports in the decision-making process should ensure that they fully comply with FCRA requirements by: (1) obtaining the applicant’s written authorization for the report; (2) disclosing the report to the applicant before taking adverse action based on it; and (3) providing an adverse action notice to the unsuccessful applicant. Employers that fail to do so could face liability.

## Conclusion

Social media screening can be a helpful tool for employers, but it also may pose some risk. In light of the FTC’s recent enforcement activity, employers may want to take a closer look at their screening practices and at how the vendors they employ investigate current and prospective employees.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.  
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