Is cybervetting ethical? An overview of legal and ethical issues.

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ABSTRACT

In 2017, 81% of the United States population identifies as having a social networking profile (The Statistics Portal, 2017). While the most common form of social media is Facebook, with 1.86 billion accounts, worldwide, Watsapp and YouTube also have over a billion users (The Statistics Portal, 2017).   Additional social media tools like Twitter, LinkedIn, Instagram, SnapChat, WeChat, Google+, Skype, Tumbler, Qzone and Blogs also have millions of users. With so many people creating online personas, employers are increasingly searching a candidate's online information to evaluate the prospective employees' job and organizational fit (Berkelaar and Buzzanell, 2014).   But, cybervetting, the process of reviewing a prospective candidate's online information, should not be casually applied to an organization's hiring practices. Because information is easy to access, does not mean it is legal or ethical to use as a basis for hiring decisions.

This article provides an overview of cybervetting, a review of relevant literature, discussion on how organizations are using cybervetting in the hiring process, potential legal issues, potential ethical issues, recommendations for managers and conclusions.

Keywords: Cybervetting, Social Networking, Social Media, Hiring, Human Resources
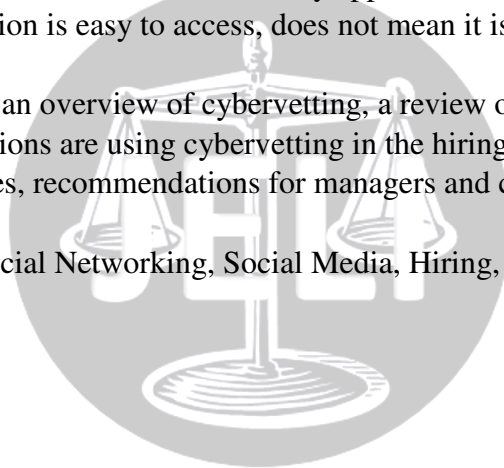
INTRODUCTION

81% of the United States population identifies as having a social media (SM) account (The Statistics Portal, 2017), online personas are taking on increasing value.   People spend time, communicating, networking and cultivating their online visibility. And online connections are not just with friends and family, but often with co-workers, institutions and professional organizations.   Many people are sharing vast amounts of information about their personal and professional lives on social media platforms.   With information easily accessible, many employers are choosing to include an online review of a candidate's social media sites prior to hiring.

When an employer conducts this online review process, it can be classified as *cybervetting*, or the acquisition of online information to assess the suitability of an individual for a particular job. Specifically, the employer is gathering information about a potential hire from online sources in order to evaluate past behavior and attempt to predict future behavior. Cybervetting takes advantage of the Internet by accessing information that is increasingly available, easily accessible and often highly affordable. However, online information technologies not only offer new strategic hire options, uses of online information introduce both serious legal and ethical concerns for individuals, groups, organizations, and society.   While the legal and ethical concerns are numerous, three will be highlighted as examples.

One legal and ethical concern is an employee's right to a personal life. There are many reasons why someone is engaging in online communications. The individual may be seeking information, help, development and/or friendships. Depending upon the motivation for participation, individuals will have very different social media accounts. Should a candidate be dismissed from the hiring process because they use social media for help or friendship, rather than for professional networking?

A second legal and ethical concern is an employee's right to know the organization's pre-employment screening process.   As an example, when an organization conducts a credit search or background check, candidates are told the procedures will occur and asked to sign a document giving their permission. The candidate understands details of the background search like when, how and why. If the candidate does not want to participate in these types of searches, they can refuse to sign the background search permission form and opt out of the hiring process. When a manager conducts an online search, they have not necessarily informed the candidate of the search, there is little clarification on what information the manager is seeking to obtain or how the information may be used in hiring decisions.   Is it legal or ethical to use just any information found on a search engine as a basis to hire or eliminate a candidate?

A third legal and ethical concern is in regards to discrimination.   Under Title VII of the Civil Rights Act individuals are protected against employment discrimination on the basis of race, sex, religion and/or national origin. In others words, it is not lawful to discriminate against any individual in regards to hiring.   Some managers are viewing social media as an opportunity to gain information that can affect their perceptions of applicants and ultimately the hiring outcome.   Is it legal or ethical for a hiring manager to conduct an undisclosed search and make undisclosed hiring decisions? Doesn't this create an opportunity for discrimination?

Cybervetting is not occurring in a few isolated instances rather it is pervasive. "A 2010 Microsoft survey indicated that 79% of U.S. human resources professional respondents used online information to evaluate candidates most or all of the time and that this type of evaluation is part of their formal hiring process," (Mikkelson, 2010). In the same Microsoft survey, not only are the HR managers reviewing the social presence, 84% surveyed believed consideration of a candidate's online reputation when evaluating for a job is appropriate and 70% have rejected a candidate based on information uncovered in the online search (Mikkelson, 2010). Finally, the Microsoft survey reports that "In the United States, 86 per cent of human resources professionals state that a positive online reputation influences the candidate's application to some extent; almost half stated that it does so to a great extent" (Joyce, 2016). But, what constitutes a positive online reputation?

The increased review of social media screening, cybervetting, in the hiring process has occurred rapidly. Consider the number of managers self-reporting using social media searches in the application hiring process. In 2005 it was 8%, (Potter and Costello, 2015) in 2010 the number was 79%, (Potter and Costello, 2015) and in 2011 the number of managers using social media searches rose to 91% (Vroman, Stulz, Hart and Stulz, 2016). With such rapid increase in social media screening, policies and procedures have not caught up at the same rate. "Most companies have no policy on social media sourcing," (Hollon, 2016). Recently, the Society for Human Resource Management conducted a survey and found 59% of companies participating in the survey had no formal or informal social media screening policy (Hollon, 2016). The Society of Corporate Compliance and Ethics and the Health Care Compliance Association issued a survey in 2009 and questioned 800 individuals at nonprofit, for-profit and government agencies and found that 24% of respondents stated they had to make employee decisions based on applicant social networking activities even though their organization had no formal cybervetting policy (Mikkelson, 2010). With more and more managers conducting their own searches and no organizational policy to guide their process, there is significant potential for illegal or unethical hiring decisions.

"Social media is no longer cutting-edge; it is mainstream. For HR to overlook it today would be like ignoring e-mail 20 years ago" (Segal, 2017). While social media cannot be overlooked, casual cybervetting allows organizations exposure to legal and unethical issues. It is important that organizations understand the risks associated with boundary-less use of the Internet to review a candidate. The potential problems are exponential. To avoid illegal or unethical hiring actions, it is important that each organization develop an active, clear Cybervetting, or Social Media Search Policy. The following paper will provide a review of literature, an overview of legal issues, an overview of ethical issues, guidelines for developing an organizational Cybervetting Policy and conclusions.

REVIEW OF LITERATURE

The number of social media users is one the rise and so is the number of employers using social media searches to vet potential candidates. But, the increase in application has soared much faster than the development of organizational policy regarding social media review in the hiring process. Now, organizations are backtracking and or trying to quickly establish

contemporary policies that address legal and ethical application of easy Internet access to candidate information.   Clearly, there are pros and cons associated with organizational cybervetting.   But, beyond pros and cons, there are serious negative consequences that can occur from information misuse.

Consider the following example, "In June of 2009, the city of Bozeman, Montana, dealt with a firestorm of criticism over its requirement that all job applicants reveal personal, professional and social networking websites, including logins and passwords, so that online information could be reviewed as part of the application process," (Mikkelson, 2010). When citizens of the city heard about this requirement, there was an extensive negative response. Not only were city employees upset, but the entire community responded with alarm. Upon reflection of the citizen's reactions, the city stated that their cybervetting policy had likely exceeded community standards. Initiating the request for personal passwords, prior to the establishment of a clear, transparent, comprehensive social media review policy, likely contributed to the Bozeman community concern. This example demonstrates why greater understanding is needed regarding how, when, where and why cybervetting should be applied in the work world. The following will offer a chronological review of literature regarding cybervetting.

Author	Date	Title	Study	Conclusion
Brown and Vaughn	2011	The Writing on the (Facebook) Wall: The Use of Social Networking Sites in Hiring Decisions	Hiring managers can use Social Networking Sites (SNS) to find information about potential candidates. There are numerous legal issues that can develop by using SNS in the hiring process.	Hiring managers should have evidence for the validity of a SNS search in terms of job relevance of information.
Pike, Bateman and Butler	2013	Dialectic tensions of information quality: Social networking quality: Social networking sites and hiring.	Information is abundant on SNS but using this information for hiring is questionable.	1). Managers that use SNS must have the ability to understanding the difference and relationship between relevant and reliable information. 2.) Further, managers must understand how their perceptions may impact the hiring process.
Fong	2014	Rethink using social media to learn about job candidates.	It is understood that a human resources (HR) professional cannot ask a job candidate to tell their religion, political	1). The use of social media can lead to bias hiring decisions.

			affiliation and sexual preference. But, a scan of social media may provide a hiring manager with this protected information.	2). Organizations should create a policy regarding SM searchers that is reviewed by legal team.
Delarosa	2014	From due diligence to discrimination: employer use of social media vetting in the hiring process and potential liabilities.	Labor market search theory states that when an employer and employee can make a quality "match" through pre-employment screening, business profits all rise. For this reason, many employees use SM to gain as much information as possible about potential employees.	Employers are generally allowed to investigate applicants. But, there are many legal and ethical concerns arise from online searches.
Bologna	2014	Social Media Strategies in Recruiting, Hiring Pose Legal Risks for Employers	The article focuses on legal challenges that develop when employers gain protected class information and/or create barriers to employment.	1). To avoid legal issues, it is best to conduct social media checks at the end of the hiring process along with any other required background checks. 2). Social media screenings should examine an applicant's ''public profile'' information only.
Drouin and O'Connor, Schmidt and Miller	2015	Facebook fired: Legal perspectives and young adults' opinions on the use of social media in hiring and firing decisions.	The study reviews surveys from 448 undergraduate regarding their opinions of social media use for employment decisions.	Most of the young adults surveyed were not in support of a social media review in the hiring practice.
Gibbs, MacDonald and MacKay,	2015	Social media usage in hotel human resources: Recruitment, hiring and communication.	The following study surveys human resources practices for 1,711 North American hotels. Specifically seeking understanding regarding the use of social media (SM) for human resource (HR) activities.	1). More than half of North American hotels use SM for HR activities. 2). Use of SM in hotel HR is more

				focused on marketing versus recruitment activities.
Harrison and Budworth	2015	Unintended consequences of a digital presence: Employment-related implications for job seekers.	The paper investigates how job seekers' digital profile influences employment outcomes.	The study provides evidence in support of the notion that established effects of impression management extends from an interview setting to a digital context.
Davison, Bing, Kluemper & Roth	2016	Social media as personnel selection and hiring resources: Reservations and recommendations.	This paper examines the legality, validity and reliability, of job candidate information obtained through social media.	HR practitioners should use social media for hiring purposes with awareness and caution.
Hartwell	2016	The use of social media in employee selection: Prevalence, content, perceived usefulness, and influence on hiring decisions.	This following study uses surveys to understand how HR leaders are using social media assessments (SMA) in employee selection, types of information frequently used from social media in the hiring process and how professionals rated mock candidates based on social media profiles.	Results of the study indicate that SMAs are considered useful and are currently being used in practice to review applicants in systematic ways.
Landers and Schmidt	2016	Social media in employee selection and recruitment: An overview.	The following book provides information regarding social media and common uses for employee recruitment and selection and practical considerations regarding appropriateness and validity.	Practitioners considering social media as part of human resource planning should research and understand legal and ethical issues.
Landers and Schmidt	2016	Social media in employee selection and recruitment:	Social media are increasingly used in employee selection.	1). Reliability and validity of information is unknown.

		Theory, practice, and current challenges.		2). Social media data may not be practical. 3). Information obtained from SM may not be legal. 4). Information obtained from SM may not be ethical to use. 5). Optimally application and strategies of SM in the hiring systems is unknown. 6). SM policies may not remain current with technology.
Van Iddekinge, Lanivich, Roth and Junco	2016	Social media for selection? Validity and adverse impact potential of a Facebook-based assessment.	The following researchers use Facebook profiles of college students applying for jobs. Then, recruiters from a variety of organizations reviewed the profiles and shared candidate evaluations.	Organizations cautiously use social media information to assess job applicants. There are numerous legal and ethical considerations.
Bartley and Carton	2016	Social media's use in employment practices.	A company's use of social media in making hiring decisions could potentially create legal issues. As employment discrimination based on color, race, national origin, religion, sex, disabilities, age, differences in an employee's DNA, and veteran status is illegal. Discrimination claims may develop due to employers gaining information about an applicant's protected status via social media.	1). Employers should use social media only as part of a recruitment plan. 2). All applicants should be screened consistently. 3). Only publicly available information in connection with hiring decisions

				should be reviewed.
Lam	2016	Social media dilemmas in the employment context.	The purpose of this paper is to examine legal and ethical employment-related social media issues that develop through use of social media in the hiring process.	1). Using SM in the hiring process creates potential issues of discrimination, infringement on personal privacy, and/or interference with employees' concerted activities protected by US law. 2). Employers and employees, should be knowledgeable of the ethical and legal implications of using social media in the employment context.
Reinsch, Ross and Hietapelto	2016	Employer's use of Social Media in Employment Decisions: Risk of Discrimination Lawsuits.	The paper examines legal issues that apply when employers use social media for hiring decisions. Considerations include 1964 Civil Rights Act, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, the Fair Credit Reporting Act and EEOC.	1). There is an ethical and legal risk associated with using social media in the hiring process. 2). Managers must be knowledgeable and proactive to reduce risks.
Mitchell	2017	Alcohol-related information on Facebook and perceptions of hiring managers.	The purpose of this research study was to assess how hiring managers perceive alcohol related behaviors observed in social media, as they relate to offering candidate's interview. 188 participants responded to a survey that included resumes	The results found that the more alcohol consumption visible on the Facebook profiles, the less likely it was for the hiring

			and corresponding Facebook profiles.	manager to offer the candidates interviews.

All of the reviewed articles have some commonalities. All the articles conclude that cybervetting is being used in the hiring and selection process.   All of the articles conclude that hiring managers must be aware of potential legal and ethical issues associated with cybervetting. And all articles suggest that each organization should develop a cybervetting policy that follows national and state legal guidelines and is aligned with the organization's view of ethical actions.

HOW ARE ORGANIZATIONS USING CYBERVETTING?

Cybervetting can include numerous processes and has the intent of understanding the candidates' complete digital footprint.   But, specifically, how do managers conduct cybervetting? What are the most common actions taken in their cybervetting processes? What is it that employers are looking for beyond the standard resume, cover page and references? Traditionally employment screening focusses on criminal records, financial credit scores and civil judgements. Cybervetting, often goes beyond these traditional information sources to include the candidates' personality, affiliations, likes and dislikes. While there can be many cybervetting strategies, three strategies for cybervetting will be outlined.

First, an organization may gain candidate information through a search engine review. This would involve simply typing a candidate's names into a Google or Yahoo! search bar. Information that shows up will be reviewed to for consistency and/or a comprehensive picture of the candidate. With this type of search, more than 80 per cent of the time, the manager is looking for proof that the job seeker is who they say they are and would be a "good" fit in the organization (Joyce, 2015).

Second, while some employers are willing to simply conduct an Internet search, more and more employers are accessing candidates' Facebook pages as part of the screening process (Zeidner, 2007). There are several ways to access a job applicant's Facebook. One, HR managers may request to be "friended" by the job applicant and this would allow the employers to search the candidate's profile and connections (Segal, 2017). Two, companies may also ask current employees who are already connected to the candidates for access to the candidate's page (Brandenberg, 2008).

Third, some employers directly ask candidates to give their social media links and passwords in the interviewing process. The Associated Press reported in March of 2012 that employers both private and public, are increasingly asking job applicants to give their Facebook user IDs and passwords to the employer, as part of the interview process (Ramasastry, 2012). "Some employers argue that access to personal accounts is needed to protect proprietary information or trade secrets, to comply with federal financial regulations or to prevent the employer from being exposed to legal liabilities," (Greenberg, 2017).

After considering the searching strategies, many are asking the question, when searching social media, what is it the employer is seeking? Sometimes they are seeking a comprehensive fit with employees through an examination of the employee's interests and backgrounds (Murphy, 2007) and sometimes the managers are looking for reasons not to hire the candidate

(Segal, 2017). But, what constitutes a "good" reason not to hire an individual? Without a uniform organizational policy, the "good" reason may be left up to the manager's discretion and certainly this creates legal and ethical concerns. Jessica Miller-Merrell, an HR consultant who specializes in social media states that the simple fact is most employers are not careful enough with the information obtained about candidates when conducting social media searches in their recruiting process (Levinson, 2011).

LEGAL CONCERNS AND ISSUES

With each passing year, there is increased awareness regarding potential negative consequences for the use of unpoliced cybervetting. Organizational enlightenment to the pitfalls has resulted in some employers choosing to not uses social media in the hiring process. Consider, "in the 2013 SHRM survey, 22 percent of respondents said they use social media websites like Facebook or Instagram to research job candidates, a decline from 34 percent in 2008. When surveyed in 2013 about why they decided not to use social networking sites for candidate screening, 74 percent of organizations said they were concerned with legal risks or discovering information about protected characteristics when perusing candidates' social media profiles. This is a legitimate concern," (Segal, 2017).

According to Paul and Chung (2008), there are numerous rights of the employee, that should be addressed in any social media search including: (1) right to freedom of speech, (2) right to privacy, (3) right to be free of defamation, (4) right to protest employer action, and (5) implied right to be judged based on accurate information. With this idea in mind, some specific, relevant laws will be discussed.

National Labor Relations Act Violations

The National Labor Relations Act prohibits discrimination in regards to hiring. As an example, employers often push to discourage negative employee comments about their organization, especially on social media, and violations can be met with termination. But recently the National Labor Relations Board says, "workers have a right to discuss work conditions freely and without fear of retribution, whether the discussion takes place at the office or on Facebook," (Greenhouse, 2013).   The board's ruling applies to all private sector employees and states it is illegal to adopt broad social media policies that ban comments that criticize the employer (Greenhouse, 2013). So, an employer cannot discriminate in hiring or promotion against an employee that is out spoken on Facebook.

First Amendment

The First Amendment to the United States Constitution is one of the Ten Amendments in the Bill of Rights. The First Amendment gives people the right to freedom of religion, freedom of speech and to freedom to assembly peacefully. Cybervetting can infringe on someone's right of free speech. Consider a hiring manager that sees a candidate's political views on Facebook and disagrees.   If this information is used to end a candidate's hiring process, this is a form of discrimination. "Like other speech issues involving public employees, determining whether social media use is protected free speech depends on whether the social media activity is conducted in

the employee's capacity as a private citizen (and thus protected) or as part of the employee's job duties (not protected)," (Morgan and Davis, 2013). In *Reno V. ACLU* (1997) the Supreme Court found Internet communication similar to newspapers publishing, which historically enjoy broad First Amendment protection (Lipschultz, 2014).

Stored Communications Act (SCA)

The Stored Communications Act (SCA) prohibits intentional access to electronic information without authorization (Ramasastry, 2012). When an employer requests a job candidates' social media ID and password in the job hiring process, some interpret this request as a violation of the SCA. It is questionable, if a job candidate considers the request for ID and password as truly voluntary or feels pressured. Senators Chuck Schumer and Richard Blumenthal state "requiring applicants to provide login credentials to secure social media websites and then using those credentials to access private information stored on those sites may be unduly coercive and therefore constitute unauthorized access under both Stored Communications Act and the Computer Fraud and Abuse Act," (Ramasastry, 2012).

The court cases *Konop v. Hawaiian Airlines*, Inc. a 2002 case from the U.S. Court of Appeals for the Ninth Circuit and *Pietrylo v. Hillstone Restaurant Group* in 2009 from the District of New Jersey found the supervisors request of employee login credentials and the subsequent use of the credentials to access employee information was subject to civil liability under the SCA (Craned, 2012).   Additionally, some states have passed "social media privacy laws" outlawing this practice. While it may still be allowed in some states, is the employer prepared to answer the question "Is there something in particular you're looking for that isn't on my resume?"

Title VII of the Civil Rights Act of 1964

What if a hiring manager conducts a social media search and discovers information that cannot be used in the hiring process? Information like an applicant's race, military status, disability, pregnancy, having this information exposes an organization to "refusal to hire claims under Title VII" (Potter, 2015). A claim of discrimination can be filed against an employer if the applicant perceives they were excluded from the hiring process due to employer's awareness of the applicant's race, gender, religion, sexual preference, nationality, disability, marital status or other information not provided by a face-to-face interview (Moore, 2011).   Consider an employer that views a candidate's twitter feed and learns the candidate is disabled.   The employer, subsequently chooses not to hire the candidate due to fear of costs associated with medical benefits and lost work. This is a form of illegal discrimination according to the Title VII of the Civil Rights Act of 1964.

Right to Privacy

Some states have the common law tort of invasion of privacy if an employer accesses an employee's social networking site and makes a negative employment decision based on the applicant's lawful off duty activities (Mikkelson, 2010).   According to Westin (1967), "privacy is the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others" (p. 7).   In cyberspace, there is

no specific boundaries between work and personal behavior. Without boundaries there is very little protection for applicants who use social media sites for personal communications. Clark and Roberts (2010) state, "Online communities are a new way for people to interact, and this evolution of communication should be protected" (p. 514).

A number of legal policies exist in America to help employers make hiring decision in compliance with an employee's right to privacy. For example, North Dakota, Colorado, Kansas, New York, North Carolina and California, have implemented new statutes offering protection for employees entitled to some privacy regarding their off-duty personal life activities. The statutes cover marital status, legal recreational activities, political activity and sexual orientation (Chauhan et al., 2013; Elefant, 2011).

Equal Opportunity Employment Commission (EEOC)

U.S. equal opportunity laws state that employers cannot make any hiring decisions based on information that includes religion, gender, race, age, disability, genetic information or any other class of individual protected by the law (Beesley, 2016). Consider that not every job seeker has access to or uses social media. Is the candidate with greater access to social media at an advantage over a candidate with no access?   Employment judgements based on access to technology, raises concerns, under EEOC, about potential negative impact on those who are economically less advantaged (Segal, 2017). Is a candidate viewed as less qualified without a social media presence?

The Credit Reporting Act of 1970

Employers often obtain credit reports as part of the review of an applicant's background information. The Credit Reporting Act of 1970 states employers can obtain an applicant's consumer report for employment purposes if the applicant is offered a clear written disclosure and the applicant provides written authorization. Clearly, through casual, cybervetting an employer may obtain financial information about a candidate that would not be follow the Credit Reporting Act requirement of authorization from the applicant.   If the employer uses unauthorized credit information to base their hiring decision, there could be negative legal consequences.

Summation of Legal Concerns

There are numerous policies and laws in place to promote ethical employee hiring and promotion practices. Ideally, an organization is seeking complete alignment with legal policies for ethical reasons. But, if ethical considerations are not enough to support nondiscrimination practices, the potential severity of legal consequences and monetary fines should be a deterrent. "The U.S. Equal Employment Opportunity Commission (EEOC), U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) and Wage and Hour Division (WHD) have congressional authority to impose fines and penalties, and endorse settlements on behalf of employees where there is evidence that discrimination has indeed occurred (Mayhew,

2017). If a court of law finds that an employer has violated anti-discriminatory law the employer can be ordered to pay wages and benefits lost as a result of the discrimination, reinstate the employee, pay a penalty and/or pay the employee's court costs and attorney fees.   As an example, in 2008 the Wage and Hour Division in the Fair Labor Standards Act recovered more the $185 million in back wages for over 228,000 employees and during 2009, the EEOC secured more than $294.2 million in lost monetary benefits (Mayham, 2017). The discussed laws and policies are in place to protect employees and organizations that violate these policies can experience significant tangible and intangible loss.

ETHICAL CONSIDERATIONS AND ISSUES

While the law will allow for some reasonable social media searches in the hiring process, the question remains, even if the search is legal, is it ethical? Pennington et al. (2007) defined business ethics as "referring to the moral evaluation of the goals, polices, practices and decisions taken within business organizations as they impact on human well-being, fairness, justice, humanity and decency" (p. 4). When recruitment processes move away from established and validated procedures to non-validated procedures (Pilbeam and Corbridge, 2010), such as the screening of social media content, managers are often confronted with a variety of ethical issues.

Even, if permitted by the law, ethically, should an organization search an employee's digital footprint and then make employment decisions based on the employee's personal interactions? Is this ethical? Certainly, one of the clearest ethical arguments against the use of social media as part of the hiring process is that this type of search can allow for "unchecked" discrimination towards a candidate. The issue of discrimination during cybervetting, in addition to other ethical concerns, will be discussed.

Discrimination

When a hiring manager searches a candidate's social media profile, private information can be found, information from the number of children they have, to their religious and political affiliations.   It is unlikely, if uncovered, that private information will be left completely unused or acknowledged in the hiring process.   Rather it is more likely that consciously or unconsciously the manager will be influenced by the private information. Social media sites like Twitter, Facebook and Instagram, allow access to protected information like age, race, sexual orientation, political affiliations, or hobbies, all of which cannot be used in determining if an employee should be hired. Should a job applicant have to worry if their choice in political affiliation or music could negatively impact their ability to gain employment?

Information on Social Media is Not Always Accurate

What about inaccurate information?   When conducting an internet search or even a review of an individual's social media sites, it is very possible that the information obtained is inaccurate.   "It is important to keep in mind the potential inaccuracy of certain information on social networking sites" (Epstein, 2008). Organizations, friends and family can post inaccurate

information about someone. Beyond an inaccuracy, information can be falsified or intentionally misleading.   Is it fair for a candidate to lose an opportunity due to inaccuracies of falsified information on the Internet?

Mistaken Identity?

Mistaken or similar identities can lead to confusion. As an example, it is possible that an organization is searching a candidate named Sue Smith but pulls and organizes data on a completely different, unrelated individual named Suzanne Smith. Beyond potentially vetting the wrong individual, it is possible that someone has been the victim of identity theft.   Victims of identity theft may have no idea that a different virtual profile exists to which their name and identity is attached (Hazelton and Terhorst, 2015). Does a victim of mistaken identity or identity theft become un-hirable?

Does an employee have a right to separation of their professional and private persona?

Obviously professional networking sites like, LinkedIn is an acceptable screening tool in the hiring process. Linkedin members understand this is a professional site, so the candidates should expect that hiring managers will look at their profile and activity. But, Facebook, Twitter, SnapChat, etc. are often much more personal with connections to friends and family. Very often comments on these sites relate to personal events and do not have anything to do with the individual's career. Does a hiring manager have the right to research someone's friends and family in consideration of the hiring process?

Damage Morale

Additionally, employers may want to reflect on how unpoliced searches of candidates' online background can affect overall organizational morale. Current employees may fear job loss based on their own social media profiles (Broughton, Higgins, Hicks, & Cox, 2010). Employee's that are fearful, or feel micromanaged, are less productive and less motivated at work. Is scrolling through an applicant's personal life, worth damaging trust with current employees?

Forced to disclose if they want the job.

Finally, even if the candidate is told that a cybervetting process will occur, is the candidate truly comfortable with a review of their personal and private information? Applicants may feel they must comply with a cyber search if they want the job. Under this circumstance, the employers have power over applicants (Greenwood and De Cieri, 2007). If an employer exercises this power, in the hiring process, there is a risks of violating not only employee dignity but the employer's integrity. The organizational can build or reputation of potential privacy violations (Bansal et al., 2010) and scare new individuals away from applying to work with the company.

HOW TO PROCEED?

As a society, our participation in social media is likely going to increase and in parallel so too will employers review of applicant's media presence. How can employee's maintain privacy and employer's maintain competitive hiring practices in a cyberworld? What policies are needed to proceed to support reasonable work life balance, legal compliance and ethical considerations for employee and employer alike? The following offers tips and strategies for an organization to create a legal, ethical and transparent cybervetting or Social Media Search Policy.

First Step: Research, Understanding, Clarification and Boundaries

First, an organization should clearly understand relevant state and federal laws associated with applicant social media searches. Second, the organization should identify an internal ethical position, regarding social media searches, based on organizational mission, values and goals. Finally, the specific organizational cybervetting policy should be developed such that it is more restrictive than both the internal organizational ethical position and the relevant state and federal laws.
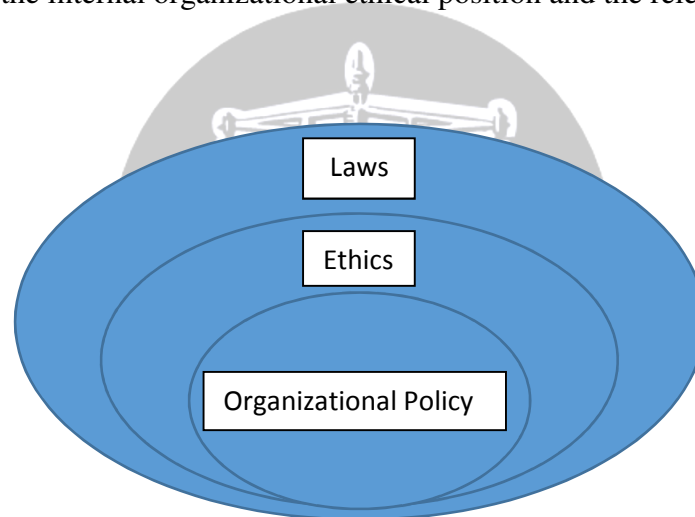
Figure 1

Second Step: Develop Well Crafted Organizational Policy for Social Media Screening

"What most employers do not think about is the way social media should or should not affect your decisions about your employees" (Moss and Kuchar, 2011). Most candidates have a social media presence and most employers want to obtain as comprehensive a picture of a candidate as possible prior to hiring. But, it is important that this comprehensive picture is obtained within legal and ethical boundaries.   "Lack of systematic research leaves cybervetters with little guidance on how to engage in psychometrically sound web-based searchers," (Berger, 2016).

The second step, after research, understanding and boundaries, is to build a well-crafted organizational policy on social media screening. The following is an example of a cybervetting, or social media screening policy that can be applied within an organization.

Policy Development

1. Research relevant state and federal laws as they relate to social media searches.
2. Review and put in writing, if not already in writing, the organizational ethics policy.
3. Write an organizational Social Media Search Policy (SMSP) that is more restrictive than state and federal laws and the organizational ethics policy.
4. The policy should be an extension of the organizational normal background checks and reviews.
5. Only information that is relevant to the required job skills should be obtained.
6. Have a legal team review the SMSP prior to communication of policy or implementation of policy.

Communicate and Training Employees

7. Communicate the organizational social media search policy (SMSP) in writing and verbally to all employees.
8. Train all employees, not just managers, on how and why to follow the SMSP. Employees at any level of the organization could violate a job applicant's privacy with a cyber search.
9. Offer training not just on the organization SMSP but on all information the law prohibits from considering in the hiring process. An employee with training and information is much less likely to make errors or engage in misconduct.
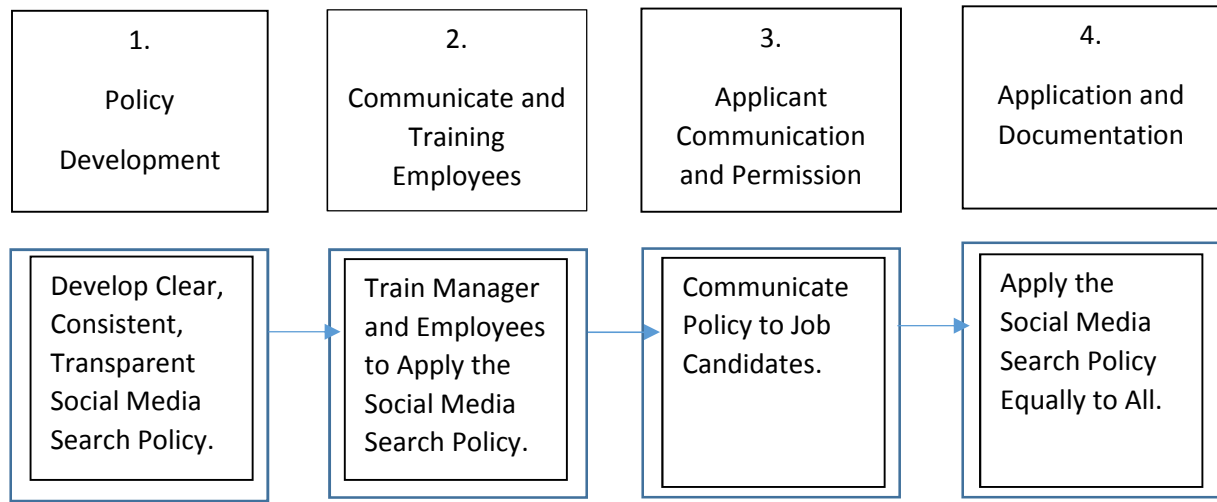
Applicant Communication and Permission

10. Inform applicants of the needed cyber search, what is involved and why. Give them the opportunity to opt out of the search and hiring process.
11. Obtain written permission from the applicant to conduct the specific cyber search.

Application and Documentation

12. The SMSP should be applied uniformly and consistently to all applicants from entry level to executive. Be consistent. Review all candidates or no candidates.
13. Applicant information obtained from the search must be secured and protected against external or internal threats.
14. Conduct a cyber search later in the process, after an interview when membership in a protected class is likely to already be known.
15. Do not allow hiring decisions about a candidate to be based on information that was obtained solely from a social media review.
16. If negative information is found in a cyber search, allow candidates the opportunity to explain or respond to any information.

17. Keep accurate records throughout the SMSP. Document all hiring decisions and the role any information played in the decision process.

1. Policy Development	2. Communicate and Training Employees	3. Applicant Communication and Permission	4. Application and Documentation
Develop Clear, Consistent, Transparent Social Media Search Policy.	Train Manager and Employees to Apply the Social Media Search Policy.	Communicate Policy to Job Candidates.	Apply the Social Media Search Policy Equally to All.

Figure 2

It is also acceptable for an organization to select a social media policy that prohibits the use of online searches, all together.   Whatever hiring policy, the organization develops, total disclosure should clearly include the social media search policies and procedures (Brunot, 2017). Maintaining a transparent social media search policy can minimize organizational risk and unethical hiring behavior.

CONCLUSION

Currently, Millennials account for 36 percent of the U.S. workforce and by 2025, according to the Bureau of Labor Statistics, Millennials will account for 75 percent of the global workforce (Segal, 2017). This group of future employees and leaders has grown up fully engaged with social media sites and devices. With this information in mind, it appears, the use of social media in the workplace will continue (Segal, 2017).   Organizations that want to optimize their understanding of a candidate prior to hire, should prepare to legally and ethically cybervet. It is recommended that all organizations develop a legal, ethical and transparent cybervetting policy. A strategic cybervetting policy will allow an organization to foster better pairing between an applicant and organizations but organizations must actively build and introduce this pairing process on a solid legal and ethical foundation.

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APPENDIX A

State that have passed social media privacy laws.
(Wright, 2014)

- Arkansas
- California
- Colorado
- Illinois
- Louisiana
- Maryland
- Michigan
- Oregon
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- Oklahoma
- Oregon
- Rhode Island
- Tennessee
- Utah
- Washington State
- Wisconsin