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Should human resource managers use social media to screen job applicants? Managerial and legal issues in the USA

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Abstract: Purpose - The purpose of the present paper is to describe managerial and US legal issues associated with using social networking web sites (SNWs) such as Facebook for personnel selection. Managers must consider the benefits and concerns that using such information presents. Design/methodology/approach - The paper identifies issues based on the academic literature, theoretical concepts, and current managerial and legal developments as reported in the popular and business press. Findings - Using SNWs to screen applicants offers benefits to organizations in the form of gaining a large amount of information about applicants, which may be used to supplement other information (e.g. a resume). It may also help a firm address "negligent hiring" legal concerns. However, other legal considerations as well as issues pertaining to information accuracy, privacy, and justice argue against using such information. Research limitations/implications - Throughout the paper, topics are raised which may guide future research. Practical implications - By recognizing both the advantages and disadvantages of using SNW information for applicant screening, managers can make an informed decision as to whether they wish to use this screening method; if so, managers can devise policies that provide the firm with appropriate information while respecting applicant privacy, and complying with US legal and ethical expectations. Originality/value - While much has been written about SNWs, little has been written from an academic perspective on the advantages and disadvantages of accessing applicants' SNWs. The present paper reviews the literature from a variety of disciplines and identifies important issues for researchers and managers.

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Full text: 1. Introduction

As technology advances, human resource (HR) managers are increasingly inundated with new sources of information. The internet has a major role in distributing this information. social network web sites (SNWs) such as Facebook, MySpace, and the more professionally-oriented LinkedIn allow individuals to post information in order to communicate with friends and family. However, SNWs - as well as related applications (e.g. micro-blogging web sites such as Twitter) - also allow recruiters to conduct extensive background checks. The present paper will discuss the legal and managerial implications of these technological developments for organizations operating in the United States, where such sites are quite popular ([14] Burbary, 2011). When appropriate, relevant research studies will be discussed and unanswered research questions raised. The purpose of the paper is twofold: First, to acquaint hiring managers with the advantages - and the disadvantages - of using SNWs for selection purposes so that they might make better informed decisions when considering this possible background investigation method. Secondly, the paper suggests areas of possible future research.

2. Using SNWs for personnel selection

SNWs allow individual users to post personal information on the internet in order to communicate with friends. Twitter allows short weblog ("blog") messages of 140 characters (called "tweets") and full social network web sites such as Facebook, Google Buzz, and MySpace allow users to post multiple pages and include photos and videos; friends can also make comments ([57] Picard, 2011; [32] Holt, 2011). Much of this information is unprotected and available for anyone to view that finds it - although SNW users can usually adjust their "privacy settings" to allow only "friends" to see certain information ([9] Boyd and Ellison, 2007). Facts such as age, location, relationship status, as well as personal thoughts and pictures are widely available through these media, and allow a level of immediate intimacy that has never before existed. For example, users can access

Facebook and find a person they recently met and immediately learn personal details of the person's life - details that may have taken months or years to learn in previous generations. Apparently, many people who post such details do not carefully consider their potential audience. But who is reading their SNW profiles? Human resource managers are actively reading SNW profiles. HR professionals in the USA are increasingly looking to SNWs to find information about candidates so the correct hire can be made. Careerbuilder.com survey statistics suggest that the percentage of 2,600 managers who look at SNW profiles as a way to screen candidates has risen from 22 percent in 2008 to 45 percent in 2009 ([28] Haefner, 2009). Approximately 11 percent more plan to use social media to screen applicants. Approximately 29 percent report using Facebook, 26 percent use LinkedIn, 21 percent use MySpace, 11 percent search blogs, and 7 percent utilize Twitter. As Facebook is currently the most popular social media site, it is not surprising that American employers visit this site. Further, only 17 percent of employers consider this type of background check to be a violation of an applicant's privacy ([61] Read, 2007).

Not only are employers frequently reading SNW profiles, they are using them to make hiring decisions. Almost 35 percent of US employers in one survey report that they have found content on social networking sites that caused them not to hire an applicant ([28] Haefner, 2009; also see [67] Smith and Kidder, 2010). [63] Rowell (2010) reports that 70 percent of HR managers say they have rejected a job applicant for his or her internet behavior. [48] Mangla (2009) recounts the story of a 22-year-old master's degree student from California. The student allegedly posted on her Twitter feed, "Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work." A Cisco employee saw the tweet and responded by asking who the hiring manager was. The exchange attracted commentary from others; the student ultimately turned down the job, perhaps because she believed that Cisco would have withdrawn the offer anyway. It is apparent that checking social media sites is a part of the hiring process for many employers and is becoming an increasingly used avenue to hire - or reject - applicants.

Should HR managers use SNW information when making hiring decisions? There are numerous arguments in favor of using such information, as well as several arguments against using such information. Each of these arguments will now be considered.

3. Why HR managers should use SNW information

3.1 SNWs provide more honest applicant information

Traditionally, HR professionals and other hiring managers relied on cover letters, resumes, application forms and sometimes interviews to initially screen job candidates. However, resumes and cover letters are often written to highlight only the best possible characteristics of the applicant; application forms and interviews also suffer from impression management attempts ([2] Barrick *et al.*, 2009; [33] Huffcutt, 2011). Information found in cover letters and resumes is often factually incorrect or exaggerated ([29] Hall, 2004); as many as 41 percent of the 5.8 million resumes reviewed by the employment firm ADP contained errors in terms of education, employment experience, or credentials ([42] Levashina and Campion, 2009).

Because SNWs are usually created for purposes other than securing a job, HR managers may believe that these sources provide "honest" (valid) information about the applicant. Unlike resumes, SNWs are not easily customizable; people may have different versions of their resume for different job applications, but they do not have different versions of their SNW ([22] Fernando, 2008). By examining SNW profiles of applicants, HR professionals can verify information on the resume or application form ([10] Brandenburg, 2008). If the HR manager discovers discrepancies, he or she may doubt the accuracy of the application documents or may decide to question the applicant closely about discrepancies during an interview.

Some HR managers may pay particular attention to information written by "friends" of applicants on their SNWs. Such information may be seen as more truthful because it was not posted by the applicant and therefore may be seen as less subject to impression management attempts. A survey by Microsoft reports that 43 percent of employers say they will not hire job candidates based on "inappropriate comments" written by relatives and

friends ([26] Goodman, 2010). The conditions under which such employers actually attend to this factor and make decisions based on it remains a subject for continued discussion and investigation ([73] Walther *et al.*, 2008).

3.2 SNWs may provide more complete information in a cost-effective manner

With a minimal investment of time and expense, HR managers can use SNWs to expand on job application materials and test scores to see how potential employees live their lives. An HR professional can use LinkedIn to see connections the applicant has made in the professional world and other jobs they may have held that were perhaps not listed on the application form. Facebook and MySpace show the HR professional the interests and hobbies that each applicant has. Media within these web sites such as pictures and videos can give an HR recruiter insight into an applicant's behavior when not on the job and an idea of the person's character. While Twitter only allows short messages to be posted, this can also be used to get an idea of an applicant's likes, dislikes and overall character in both non-professional and professional settings. [8] Bohnert and Ross (2010) report that people are less likely to recommend for hire applicants whose SNW emphasizes their enjoyment of abusing alcohol rather than family activities.

[39] Kristof-Brown (2000) suggests that selection decisions are a function of two types of evaluations: the Person-Job (P-J) fit and the Person-Organization (P-O) fit. Hiring managers primarily evaluate a candidate's knowledge, skill, and ability (KSA) levels in determining P-J fit, but they make judgments about people's character and personality when determining the candidate's P-O fit. This suggests that to the extent that SNW may provide information about an applicant's personality and character, SNW evaluations may affect hiring decisions primarily through the P-O fit determination. However, if SNW information focuses on job-related KSAs, then it may affect hiring decisions through a P-J fit determination. Research should investigate this possibility.

Some SNWs allow users to endorse specific companies or products on their webpages (sometimes linking directly to those firms' web sites). For some SNWs this is called "Liking" a company. The types of companies or products that a person likes may suggest something about the personality and character of the applicant. Such information may provide reasons to reject applicants. Suppose a day care center uses such methods to evaluate applicants and discovers one applicant has a propensity for web sites oriented toward pedophilia; the firm might use this information to screen out such an applicant.

Relatedly, many firms administer tests or conduct extensive interviews in order to assess an applicant's personality characteristics and to determine whether they would "fit in" with the company and their workgroup ([24] Gatewood *et al.*, 2011). Such procedures are frequently reserved for finalists because such procedures are costly or logistically complicated (e.g. bringing the candidate to the HR office for a proctored examination). However, SNWs allow HR managers to assess personality characteristics when initially screening applicants. Research by [38] Kluemper and Rosen (2009) compared psychological test scores to laypersons' personality trait ratings. The findings suggest that untrained laypersons do a reasonably accurate job of assessing applicant personality traits solely from SNWs (also see [1] Back *et al.*, 2010). Thus, by screening the content of applicant SNWs, HR managers may be able to assess applicant personality traits earlier in the process and to do so for more applicants.

3.3 Organizations must be aware of "negligent hiring" legal and ethical considerations

Some American organizations, particularly those involved in public safety (for example, trucking, child care, or public sector organizations), have found themselves under legal scrutiny when employees engaged in illegal actions, and it was later discovered that information about prior illegal behavior was available at the time of hire ([40] Kuzmits *et al.*, 1991; [42] Levashina and Campion, 2009). A legal doctrine of "negligent hiring" has emerged in the USA that holds that organizations should conduct reasonable criminal background checks when screening applicants. A failure to do so may make the organization partially liable for the employee's behavior because the employee is acting as the organization's agent. Of course, some attorneys might argue that illegal

and immoral actions are obviously beyond the scope of what a reasonable observer would expect an organization's agent to perform. Nonetheless, many organizations operating in the USA feel a legal duty to perform a criminal background check. Other firms also use integrity tests to detect criminal tendencies ([35] Karren and Zacharias, 2007).

One aspect of a criminal background check is to do an internet search of the applicant's web sites (as well as public records of convictions, etc. posted on the internet). Some legal experts opine that it is probably acceptable for employers to view SNW profiles that are readily available, as when the applicant has not turned on the "privacy settings" available with SNWs (for discussion, see [21] Elzweig and Peebles, 2009). While US law in this area is still developing ([10] Brandenburg, 2008), some suggest that because private information is voluntarily posted to third parties (e.g. social networking web sites), such information is afforded little legal protection ([59] Pike, 2011). Nevertheless, organizations may be wise to notify prospective applicants that such internet searches may be conducted so that they realize that there is no expectation of privacy in such situations. Firms may wish to go one step further and obtain written informed consent before proceeding, in order to minimize the possibility of a lawsuit ([36] Kaslow *et al.*, 2011); in some Canadian provinces such informed consent is required by law ([58] Pickell, 2011).

The discovery of illegal activities on SNWs may prevent the organization from hiring a person who will embarrass or endanger fellow employees or customers. Even if the person is not engaged in criminal behavior, they may be engaged in questionable practices. A good predictor of future behavior is past behavior. Suppose an applicant is obviously being disloyal to his or her current employer by posting what appear to be trade secrets, unreasonably criticizing their supervisor, or engaging in practices that appear to violate a non-compete agreement. The prospective hiring manager may be wise to reject the applicant because of such questionable practices.

This discussion has provided an overview of reasons why HR managers should use SNWs to screen job candidates. This overview has necessarily been at a general level, perhaps obscuring industry variations. For example, SNW background screening may be more widespread (and accepted by job candidates) in certain industries, such as military suppliers, banking, child care, and private security firms, where hiring the wrong candidate may have serious consequences. From a cost/benefit perspective, the benefits derived from the information obtained by searching SNWs may greatly outweigh the costs of seeking such information. Future survey research might explore this issue.

Just as there may be industry variations, there may be labor market segmentation variation. For example, one might expect to see significant differences in the SNW presence of different types of job candidates (e.g. low-skilled, creative talent, technical, managerial, and senior-level executives). For example, many managers are over 35, but the majority of Facebook users are ages 18-34 ([14] Burbary, 2011); therefore, one might not expect to see as many SNW background searches for older managerial candidates. Even so, some HR managers may do a cost/benefit-type analysis and conclude that it is worth checking the SNW for senior-level managers where adverse publicity would cause public relations problems for the firm. Similarly, the percentage of HR managers using SNWs to screen candidates will likely differ across roles (e.g. HR clerk, interviewer, senior HR manager, the candidate's immediate supervisor). The authors are aware of no published research to date that examines which roles tend to conduct SNW checks for various types of positions in different industries - or the rigor with which various roles conduct such investigations. This remains an area for future investigation: Will we see a "trickle-down effect" over time such that this type of SNW search is eventually treated as a routine clerical task?

Firms wishing to use SNWs also must consider other issues. For example, technology is rapidly changing. Facebook now offers facial-recognition software, raising the possibility that a third party, such as an employer, might use an online photograph to search for additional photographs and accompanying information about the person ([51] Moe, 2011a). An anonymous, provocative photograph posted, say, four years ago, may now be

identifiable using such facial-recognition software ([52] Moe, 2011b). Location-based technology can reveal where a candidate has been (and where photographs were taken). Managers need to consider this rapid rate of change and periodically review which technologies they will employ for background investigations.

Similarly, do managers only wish to consult the prospective employee's SNW? Or do they also wish to consult some of the applicant's friends' pages to see what the prospective employee posted on those pages? How expansive do HR managers wish to be when screening candidates? Does it even matter? No published research has explored the numerous possible variations in search procedures to examine whether these variations impact the number of successful hires, or other dependent variables (e.g. organizational attractiveness, turnover rate, corporate profitability).

Managers must make decisions about storing and safeguarding the information that they acquire. Data breaches can disrupt lives (e.g. identity theft), and can embarrass organizations. Therefore, information security must be considered ([62] Ross *et al.*, 2009). Relatedly, do companies wish to participate in data sharing pools (often operated by "data mining" firms)? If so, what information are companies prepared to share? Managers need to think carefully about these technological and privacy issues and devise policies to address them. Researchers need to also investigate these issues to describe typical variations or "clusters" of policies and their antecedents, as well as the consequences of such policies.

Research is also needed regarding the role of HR managers in advising their business colleagues about how to screen candidates prior to any interview. In the first six months of 2011, there has been an average of 83 applications for each graduate-level employment position in the U.K.; this is up from 31 per position in 2008 ([77] Yianni and MacLaren, 2011). With so many applications per position, one HR manager is unlikely to screen every applicant; others (e.g. HR clerks, prospective immediate supervisors) will probably research some interviewees' SNWs. This raises concerns about accuracy, consistency, and protection of applicant privacy. To satisfy such concerns, HR managers need to train employees in these matters. What is a good approach to training these evaluators? In addition to incorporating content about privacy and recordkeeping, such training may focus on past behaviors that are relevant for specific job dimensions. Research in other contexts (e.g. performance appraisals, interviewer training) suggests that raters may be more accurate if they consider the dimensions of the job ("performance dimension training") and various levels of performance that specific behaviors suggest, from a shared perspective ("frame of reference training"). Similarly, training in an awareness of cognitive biases and rating errors (e.g., "contrast effects" across persons being rated) may be useful ([6] Bernardin *et al.*, 2000; [76] Woehr and Huffcutt, 1994; [49] Melchers *et al.*, 2011). Training that provides opportunities for practice and discussion is also generally helpful. We anticipate that incorporating these features of training will be useful as HR managers train their colleagues to evaluate SNWs.

HR managers may also take a cue from the Biodata/Weighted Application Form literature (e.g., [27] Gunther and Furnham, 2001; [69] Stokes and Cooper, 2004) and conduct an empirical examination of life events and applicant interests as reported on SNWs to see which predict job success, turnover, or other important variables. For example, is the number of "friends" a person reports a surrogate measure of extraversion and therefore predictive of sales success? Are frequent changes of address indicative of early turnover? If one is gathering much of the same type of information from a SNW that one gathers from a Biodata/Weighted Application Form then one might expect similar validities - which, for Biodata, are often rather good ([18] Dean, 2004).

4. Why HR managers should not use SNW information

In spite of the above reasons for using SNW information, there are numerous concerns that suggest HR managers should resist the temptation to use this information for selection purposes. These must be given serious consideration.

4.1 SNW information is not accurate

One concern about using SNW information is that it does not accurately reflect what the applicant will be like as

an employee. How people behave at work may differ from how people behave away from the workplace; researcher suggests that situational factors (e.g. workplace norms) as well as individual characteristics (e.g. personality factors) influence behavior ([41] Leary and Hoyle, 2009). Further, the SNW itself exhibits its own unique situational influence. The social norm of many SNW sites appears to emphasize bravado, exaggeration, and outrageous behavior ([13] Buffardi and Campbell, 2008; [67] Smith and Kidder, 2010). Many people post information that conforms to these norms, even if does not reflect their actual behavior in other situations - including work. Similar observations may be made for the comments of an applicant's friends who may be pursuing their own impression management goals.

To add to the complexity, some individuals hire firms with names like "Reputation" and "Brand-Yourself" to help manage their online information and insure that positive information is discovered quickly and ranked much higher than negative information when search engines are used to conduct background checks ([65] Schiller, 2010).

Sometimes information that is available via SNWs is old (e.g. an account that has not been updated) and reflects the applicant in a different phase of life. For example, a political candidate in her twenties was embarrassed when a provocative photo of her at a party when she was 18 appeared in the press; she had "cleaned up" her Facebook profile prior to the political campaign, but had forgotten to do the same for her old, unused, MySpace profile ([12] Brus, 2011). In a previous generation, the things that a person thought and even wrote when in high school and college remained private or were difficult for an employer to retrieve (e.g. a letter to the editor of a college newspaper would only be archived in the university library). Today, such information is widely available either on old SNWs or with a few internet searches (e.g. back issues of many college newspapers are available online). However, people mature, changing their opinions, and such information may not be relevant to the candidate's current job application. Yet decision making research suggests that hiring managers tend to use information to "screen out" rather than to "screen in" candidates and that they give great weight to negative factors as they evaluate candidates ([74] Webster, 1982). Thus, some managers may use inaccurate or outdated information to deny consideration to otherwise acceptable job candidates. Further, research shows that people who frequently rely on the internet for information tend to view such information as more credible than those who rely more on other media ([71] Sundar and Stavrositu, 2006). Thus, it appears that researching applicants via the internet may become a self-reinforcing cycle; the more people use this approach, the more likely they are to see this approach as credible and appropriate - even when it is not.

4.2 The SNW may be the wrong web site

Collectively, over 535 million profiles currently exist on LinkedIn, Facebook and Twitter; these represent a large and increasing segment of the workforce in the industrialized world ([7] Black, 2010). However, many people have similar names, even within the same geographic area. For an employer to screen an applicant whom he or she has never met through a SNW is to invite error. Further, the applicant may never even know that he or she was rejected because of the inappropriate web site of someone else with the same name.

Accounts on many of SNWs can be created for free, and imitation accounts are not uncommon. Twitter attempts to solve this problem by verifying the identities of famous celebrities who hold accounts on their web site; but they do not verify identities for other accounts. This means that for some people, Twitter posts may not be their actual thoughts and feelings ([57] Picard, 2011). In one case, a young man in a bar left his cellphone with his friends when he took a bathroom break; his friends jokingly used his phone to send silly and obnoxious "tweets" in his absence ([12] Brus, 2011). This poses a risk for employers because if they use social media to screen candidates then they must be sure they are reading posts actually created by the applicant. On Facebook, mistaken identity is common, as pictures can easily be tagged with the wrong profile and posts can be made in reference to another profile without confirmation by another user. There are pictures and posts associated with some users that they did not have anything to do with, and if these are used in the hiring process they can give a misleading impression of what the applicant is like. Verifying SNW information is an

important step in using social media in the hiring process but not every employer verifies applicant information. In a few instances, there have been reports of a prankster, stalker, or an enemy of the person creating a malicious SNW in the person's name ([68] Smolowitz, 2008; [53] Molitorisz, 2007). In the USA, the state of California recently made false SNW accounts illegal, if the purpose is to harm, defraud, intimidate, or threaten another person ([72] Van Fossen, 2011). In at least one instance, false and defamatory internet content was created about several US law school students who would be competing for prestigious jobs at leading law firms; all of it was anonymous and some of it was made to look like the persons in question were participants in online discussions ([55] Nakashima, 2007). Thus, the employer must take into consideration that the SNW may not even belong to the applicant.

4.3 SNW information may merely reinforce initial decisions

[19] Dipboye (1982) suggests that initial information (e.g. cover letter, resume) often carry undue weight when making a hiring decision, and can influence how subsequent interviews are conducted. Further, he suggests that initial impressions influence how information that is gathered by subsequent methods is processed by decision makers. This tends to occur unless hiring managers take deliberate steps to mitigate such effects, such as seeking to disconfirm, rather than confirm initial impressions. Research generally supports this information-processing model (e.g. [56] Phillips and Dipboye, 1989).

It is possible that the same type of process may happen with SNW information. If it is among the first pieces of information about a candidate, SNW information may have inordinate influence over the hiring decision, even if later information is the opposite. If SNW information occurs later in the hiring process, hiring managers may simply use it to confirm the impression they formed earlier about the candidate ([21] Elzweig and Peebles, 2009). It may take a significant amount of disconfirming information to change initial impressions. This may partially explain why a Careerbuilder.com poll found that while approximately one-third of employers had disqualified candidates based on negative SNW information, one-fourth said they found information that supported job candidates on SNW sites ([16] *Community Banker*, 2008). It may be that with applicant SNWs (particularly for business-oriented SNWs like LinkedIn), unless there is overwhelming evidence to the contrary, HR managers tend to see what they expect to see.

4.4 Using SNW information raises fairness issues

Individuals posting information to SNWs do so for one purpose; employers using that information to make hiring decisions do so for a completely different purpose. This raises a basic issue of fairness which may make using SNW information unacceptable to society. While an extensive treatment of this topic is beyond the scope of this paper (see [25] Gilliland and Hale, 2005; [17] Conlon and Ross, 2011), it is important to note that both fair outcomes ("distributive justice") and fair selection procedures ("procedural justice") are important to job applicants ([60] Ployhart and Ryan, 1998). One aspect of procedural justice involves informational justice - how information is used to make decisions and what types of explanations are offered for those decisions; informational justice is related to attitudes toward the organization and toward a willingness to accept the firm's job offer ([30] Harris *et al.*, 2004; [4] Bell *et al.*, 2006).

Applicants who become aware that their SNW information has been consulted by an employer (perhaps from co-workers after being hired) may view the firm's selection procedure as having low informational justice, and, more generally, as procedurally unfair. This position is supported by one poll by Manpower that reports that 56 percent of job applicants would view an organization as unethical for considering their personal SNW when hiring and 43 percent said they would "feel outraged" if a firm used their SNW information to learn more about them in order to make a hiring decision ([70] Strategic Communication Management, 2007). While distributive justice and procedural justice are conceptually distinguishable, both are related to whether an applicant intends to accept a job offer ([31] Hausknecht *et al.*, 2004). Further, Hausknecht *et al.* report that applicants perceive work sample tests and interviews more favorably than personality tests and Biodata/Weighted Application Forms. There is an apparent similarity between Biodata and SNW checks, as both measure background,

history, and outside interests that are not obviously job-related. Also, HR managers may use SNW to make personality inferences. This suggests that even if the person obtains fair outcomes (e.g. a job offer), the applicant may turn it down if he or she believes that the hiring procedure violated their privacy and was unfair. There are, of course, numerous procedural variations, and these have not yet been carefully studied. For example, instead of using the SNW as a distinct "hurdle" in a multiple-hurdles selection procedure ([24] Gatewood *et al.*, 2011), do applicants consider the selection process to be fairer if they review their SNW with a recruiter during an interview (perhaps giving the applicant an opportunity to exercise "voice" by explaining certain "unprofessional" information in their web site)? Or do applicants develop a negative impression of the interviewer as "nosey" or voyeuristic (because a request to log into one's SNW at an interview is so unexpected as to be considered "outrageous" and "unprofessional")? One US corrections officer who had taken family leave and was reapplying for his position was told by an interviewer to provide his Facebook login; the applicant had to sit and watch while the interviewer perused his profile. He was offended, in part, because he had his SNW privacy settings at the most restrictive setting. Although the officer passed this scrutiny and was rehired, he has nevertheless filed a lawsuit to stop this practice ([45] Madigan, 2011).

Do applicants consider the procedure to be fairer if they are notified in advance (perhaps in a job advertisement) that their SNW may be subject to review as part of the application process? On the one hand, such a notification gives applicants an opportunity to "clean up" their SNW prior to review by the employer. On the other hand, such a notification may cause applicants to think that the employer is generally unfair by looking at the SNW and may prefer to work for another organization. Research has not yet addressed the impact of such notification on application rates.

4.5 Using SNW information raises privacy issues

Violations of privacy may be related to concerns about procedural justice. For example, procedural justice mediates the relationship between "applicants' concern for the privacy of their information" and their willingness to take an online state selection examination. It also affects their attraction to the hiring organization ([3] Bauer *et al.*, 2006). Similar concerns may exist for screening applicants using SNWs.

Numerous writers observe that using SNW information for hiring may compromise an applicant's right to privacy - that is, the right to decide whether, and to whom, to disclose information in an atmosphere free from coercion or interference ([67] Smith and Kidder, 2010). Further, modern notions of privacy include not only information about the person, but any data that are transmitted or communicated, and perhaps even the communication event itself, such as the name of the intended recipient and the purpose of the message (for a discussion of definitions of privacy, see [54] Moore, 2005; [44] McCreary, 2008; or [15] Chen *et al.*, 2008). If an employer requires access to all applicant SNWs - as the US city of Bozeman, Montana demanded in 2009 ([11] Brown and Vaughn, 2011) - then such a request may be seen by both applicants and the general public as a violation of job applicants' privacy (Bozeman withdrew this requirement after applicants complained and it attracted negative publicity).

Some SNW hosting companies such as Facebook reportedly sell participant information to other businesses ([43] Lyons, 2010). Not all of the information gathered by a hosting company is found within the individual's SNW itself. Suppose a person is logged into Facebook, then opens a second webpage (outside of Facebook) and visits a company's web site that offers a "'Like' us on Facebook" button. The fact that the person visited that company's web site is recorded by Facebook, even if the person did not click on the "Like" button ([75] Winnipeg [Canada] Free Press, 2011). Similarly, the Facebook Places feature allows third parties to track users' physical locations ([47] Makan, 2011). Individuals may have concerns about Facebook selling information about consumer preferences to other businesses ([43] Lyons, 2010). However, those concerns pale next to the concerns raised about prospective employers attempting to learn what web sites an individual applicant has visited and where he or she has physically traveled. The applicant simply did not authorize an employer to seek this type of information.

Even if offered a position, applicants may turn it down if they discover that the employer used selection methods that compromised their privacy. Research using other methods, such as biodata and weighted application forms recommends that employers avoid seeking information that violates applicant privacy, such as information about intimacy, traumatic events, political affiliation and religion. Instead, it is recommended that employers focus on characteristics and behaviors that are obviously job-related ([46] Mael *et al.* , 1996).

4.6 Using SNW information raises legal and ethical issues

Using SNW information raises a variety of legal and ethical issues. It is beyond the scope of this paper to attempt a legal review of all industrialized countries for these topics. These will be considered within the context of US laws, although some principles may apply in other countries as well. First, many social networking web sites explicitly state that their site is to be used only for social purposes and not commercial or business purposes. The very act of using an applicant's SNW may violate this policy and thus a company may be liable under a breach of contract doctrine and possibly may be in violation of the US Stored Communications Act (for discussion see [10] Brandenburg, 2008).

Sometimes, privacy settings prevent strangers from seeing certain SNW profiles. In such cases, some managers ask fellow employees to log into their personal accounts, become a "friend" of a job applicant and then, if the request is granted, the new "friend" prints or allows a hiring manager to view the prospective employee's profile. Some write that this practice is an invasion of not only the applicant's privacy, but also the current employee's right to privacy and it forces current employees to engage in misleading and fraudulent behaviors. Because this practice involves deception to obtain information, it may be legally and ethically questionable ([66] Sherry, 2011).

There are numerous equal employment opportunity (EEO) considerations as well. First, if recruiters view a candidate's online social media profile, US courts will assume that they are aware of their "protected characteristics" ([5] Berkowitz, 2009). Under various US laws these characteristics include race, gender, religion, age, sex, veteran's status, and level of disability. Most HR professionals are aware that they should not ask about these characteristics in an interview; nor should they require photographs with applications for this same reason. Yet many recruiters apparently do not realize that seeing photographs or written information about these characteristics on a SNW has similar legal consequences. By becoming aware of these characteristics (even if they are not used in making the hiring decision), human resource managers are opening themselves up to questions of discrimination. It is difficult to show that some applicants were not treated differently because of job-irrelevant characteristics (e.g. minority group status) discovered in a SNW search. Some firms attempt to avoid this liability by hiring a third party, such as an employment agency, to view the SNW and to only forward a written summary of job-relevant characteristics gleaned from the webpage ([23] Fisher, 2011; [52] Moe, 2011b). This strategy requires carefully identifying the job-relevant criteria to be examined in advance and detailed recordkeeping. Even so, it may not be entirely successful, as US Equal Employment Opportunity laws apply to both hiring firms and the employment agencies that prescreen their applicants.

Similarly, under court rulings interpreting the Labor-Management Relations Act in the USA, as amended, union status is protected. Therefore, a company cannot refuse to hire an applicant solely because the applicant expresses pro-union opinions ([50] Mello, 2004). The National Labor Relations Board has ruled that employee expression of opinions on SNWs may constitute concerted, protected, activity ([37] Klimczuk, 2010) so presumably labor laws extend to cover the expression of pro- or anti-union opinions by job applicants as well. Therefore, for an HR manager to examine an applicant's SNW is to invite discovery of such information; if the applicant was to learn of this, he or she might file a complaint based on US federal labor law.

What happens to applicants who do not have SNWs? Research on the "ambiguity effect" suggests that people prefer options with a known probability over options with an unknown probability ([20] Ellsberg, 1961). Options with known characteristics (e.g. often caused by a great deal of accompanying information) are often preferred

over options with less certain characteristics (e.g. often caused by little accompanying information). Therefore, most people generally prefer well-understood over ambiguous options. Suppose a firm has two applicants. One has a SNW that is family-oriented; the other has no SNW at all. The hiring manager might conclude that he knows the probability that the first candidate is family-oriented; he is much less certain about whether the second candidate is family-oriented. If being family-oriented is valued by the hiring manager, he may tend to hire the first applicant over the second.

What if most of the applicants without SNWs are minorities? If applicants without SNWs are less likely to be considered (because the firm has less information about them), then there may be questions of adverse impact toward minority applicants. Adverse impact is the US legal doctrine which states that seemingly neutral practices may be legally challenged if they result in fewer minority members being hired. For example, suppose that one minority group is significantly less likely to have social networking webpages than the majority group. The practice of using SNWs to select finalists may show adverse impact. Such concerns are not merely theoretical: According to [23] Fisher (2011), the media analytics firm Quantcast reports that while both African-American and Hispanic groups comprise approximately 15 percent of the US population, Blacks comprise only 5 percent and Hispanics comprise only 4 percent of LinkedIn users.

If the plaintiff establishes adverse impact, then the burden of proof shifts to the company to justify the business reason for using such a selection process. Given that hiring decisions have been made for decades without SNW information and that much of what is posted to SNW is apparently irrelevant to work performance, an employer may be hard-pressed to provide a convincing business justification without empirical validity data ([24] Gatewood *et al.*, 2011) showing that SNWs improve hiring decisions. To date, no published research has demonstrated such empirical validity ([11] Brown and Vaughn, 2011).

Let us assume that SNW evaluations cause impact. If a hiring manager has decided to use SNWs in conjunction with other selection methods that do not show adverse impact, then is it better to use SNW information earlier or later in the hiring process? Research suggests that, frequently, less overall adverse impact is shown and the quality of hires does not suffer substantially if the selection device that shows adverse impact comes later in the process ([64] Sackett and Roth, 1996). Other writers have advocated this approach specifically with SNW data and recommend that interviews be conducted prior to SNW research to insure that the correct SNW is accessed (e.g. [5] Berkowitz, 2009). Undoubtedly, some firms use SNW information only to evaluate finalists for positions. Yet, other firms probably pursue a strategy that is the opposite of what research recommends; such firms use SNW information to screen candidates early in the process. Whenever SNW information is used, [23] Fisher (2011) suggests that HR managers keep a written record of all candidates and reasons why they are not hired. This will help protect the company in the case of a lawsuit from a disgruntled applicant. Fisher also suggests recruiters inform applicants of intentions to view their social media profiles, and allowing the candidate to explain any negative aspects the recruiter sees on them.

5. Conclusion

The purpose of this article has not been to persuade managers that they should use social networking web sites when hiring; nor has it been to persuade them not to use SNWs. Rather the purpose of this article is to make recruiters and hiring managers aware of some of the significant organizational and US-based legal issues associated with using SNWs. There are numerous reasons why managers should consider using SNWs when hiring. These include:

- the likelihood that SNWs offer "honest" (accurate and truthful) information about the applicant;
- that SNWs offer a cost-effective way to gather personality and other data, allowing the hiring managers to have a more comprehensive view of each applicant; and
- an obligation to consider SNW and other background information as a form of "due diligence" when hiring and to prevent "negligent hiring" if the employee later commits a crime.

These considerations must be balanced against the arguments suggesting that caution be used when

considering such a move. This paper considered the following arguments against using SNWs when hiring:

- SNW data may not provide accurate portrayals of the applicant as an employee;
- the employer may be looking at the wrong SNW;
- even professional web sites may be ambiguous, merely reinforcing the hiring manager's initial decision based on the cover letter and resume;
- using SNW information raises fairness concerns;
- searching SNWs may violate applicants' privacy; and
- examining SNWs raises numerous legal and ethical issues, particularly in the area of American Equal Employment Opportunity law.

The present paper has focused on US law. Hiring managers in other countries will be well-advised to become apprised of their own selection, EEO, privacy, and SNW laws, as these vary from country to country. Further, based on both legislation and court cases, rules regarding the use of SNWs may change. For example, in 2010, German lawmakers proposed a law prohibiting employers from using SNWs such as Facebook for screening applicants ([34] Jolly, 2010).

Only by becoming better informed about these issues can managers intelligently decide whether they want to use this applicant screening method. Further, if they decide to use SNWs, they must carefully consider how their procedure will be structured. Policies must be written that are broad enough to adapt to changing technology, yet are specific enough to deal with a variety of possibilities that candidates may present (e.g. different types of SNWs; different privacy settings). Information that is acquired must be stored and made secure. Policies must also conform to the laws of various countries and jurisdictions. Finally, the value of the information that is obtained must be balanced with ethical standards and public relations considerations. Managers who consider these types of factors will be better able to devise thoughtful policies where both procedures and outcomes are beneficial to the company, fair to the applicant, and acceptable to society.

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Appendix

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