What You Don't Know Is Probably Hurting You
Personal Information and Cyberspace

by Amy Waldman

Dr. Elizabeth Buchanan
Ethics and the Information Society
LIS 661

Abstract

This paper addresses the issue of online personal information, its ownership, use, and potential for misuse. It begins with an examination of class and the digital divide, discusses the ways in which advanced accumulation, information asymmetry and data mining can or are being used to preserve a status quo that maintains stability for privileged individuals. It then explores the ways in which unfavorable reports or errors in reports on criminal history and credit that would otherwise be favorable are used to discriminate against them and against other cyber-literate “undesirables.” Finally, it explores possible avenues to address these inequities.

In “The Wizard of Oz,” a pivotal moment occurs when Dorothy’s dog Toto wanders away from his desperate mistress. She is in the midst of beseeching “The Great and Terrible Oz” to honor his agreement to grant her and her three bi-pedal companions their hearts’ desires in exchange for the broomstick of the Wicked Witch of the West.

Dorothy and her posse are unabashedly terrified until Toto pulls aside a velvet curtain to the left of the huge chamber, revealing the back of a very ordinary middle-aged man. Dressed in a suit, he is furiously manipulating a series of levers as he yells into a megaphone. The words are amplified and distorted, but correspond to every utterance of the fiery behemoth that is “Oz.”

“Pay no attention to that man behind curtain,” he manages to yell, between a sequence of over-the-shoulder glances, “Oh dears” and other stammered versions of “Oops!”

What do the Wizard of Oz and on-line personal information have in common? In the story, Oz is the means by which those seeking resources are able to attain them. Arbitrary rules limit access to him, and access is no guarantee that requests will be granted. Oz is in control, and nobody knows more than that.

The same holds true for our on-line personal information. When we apply for a job or credit, rent an apartment or set out to buy a house, we are all, to greater or lesser degrees, seeking the means to do what Dorothy and her friends did. We're looking to fulfill our heart's desires. In the story, Oz knows what Dorothy and her friends do not. And this, increasingly, is the case for many of us. We are American citizens and legal residents who are denied jobs, apartments, mortgages, health and life insurance and other opportunities based on data of whose existence we may be unaware.

Multiple searches of scholarly databases for information on this specific topic turned up nothing that directly addressed the issue. However, the literature reveals a host of topics on data mining and sharing, information asymmetry, and the lack of established norms and/or laws governing appropriate use of personal data. Combined, these point to a disturbing possibility and an equally disturbing reality. The possibility is the ease with which personal information collected by government agencies and commercial entities can be used to arbitrarily disenfranchise individuals and groups. The reality is that anyone aspiring to improve his or her circumstances may be prevented from doing so and, because they don't know it's happening, have no way to stop it.

In Oz, there was only one man behind a curtain pulling strings. Figuring out how to address the issues connected with the control, use and misuse of online personal information at the beginning of the third millennium is a lot more complicated.

CLASS ACTS

It is in the best interests of employers, insurers and others in positions of power to maintain the status quo. The current system works for them. History has always favored the privileged, and those without privilege have either lost out or been forced to fight for it. In this particular situation, the privileged are an increasingly small segment of society – those who own or have ready access to the personal information of others. Everyone else is vulnerable.

Class is a significant – although not decisive – piece of the puzzle. Higher status confers greater privilege. But class has been such a taboo topic in our supposedly classless society that, unlike religion, politics and sex, it isn't even mentioned on the "topics nice people don't discuss" list. In the early 1980s, when Paul Fussell was in the process of writing about class in America, he described reactions to the project. "It is as if I had said, 'I am working on a book about urging the beating to death of baby whales using the dead bodies of baby seals (Fussell, 1983).' "

Things have progressed slightly since then. While class is still not a topic of dinner table conversation, the 2004 New York Times series "Class Matters" explored the issue from several perspectives. The project, which took more than a year from start to finish, turned up some startling contradictions.

"At a time when, by many measures, class seemed to be less and less a force in American life, it had become more so in some of the areas that matter most," said Janny Scott (New York Times, 2005).

An analysis of census data by the paper showed that the most affluent Americans had become increasingly isolated from the rest of the population. In 2000, the income of the 13,400 richest families in the United States equaled that of the poorest 25 percent. And by 2000, the top 1 percent of households owned 40 percent of the country's financial wealth. If the tax cuts on the wealthiest Americans proposed by President Bush become permanent, it will mean a benefit of $2.9 trillion to that 1 percent over the next 75 years (Perelman, 2006).

The report found that while mobility – specifically the possibility of moving up the socio-economic ladder – is still possible, the ways in which that mobility is achieved is in flux (New York Times, 2005).

Nothing in the series directly addressed the ways in which on-line information can be used to inhibit upward mobility, or to ensure that those at the top remain there. But according to economist Michael Perelman, class is "an increasingly important factor in determining access to information" in an information-based economy (Perelman, 1998)."

Perelman cites the digital divide, increasing privatization of information and decreases in public education funding and laws such as the Telecommunications

Act of 1996 as contributing factors to reduced mobility and increased stratification.

"To the extent that the information age brings to some enormous wealth, while leaving others behind," he writes, "it reinforces the class structure of society. Such inequality intensifies class tensions, which, in turn, call for a stronger state in order to preserve the existing class structure (Perelman, 1998).

The digital divide is narrowing. According to a 2003 report by the US Census Bureau, 70 million households have computers and 62 million of these have Internet access. But studies show different Internet penetration rates, and these are tied to class indicators such as education, income and race. In families where the head of household had a bachelor's degree, 77 percent also had an Internet-connected computer; in families where s/he hadn't completed high school, that number plummeted to 20 percent. Of families with annual incomes of $25,000 or less, 30 percent had a computer and Internet connection as compared to 78 percent of those in the $50,000-$74,000 range. About 45 percent of Black or Hispanic households had at least one computer; that number jumped to 54 percent if there was a school-aged child in the home. However, non-Hispanic white and Asian households with a school-aged child had an 85 percent computer/Internet penetration rate.

A 2000 study showed that African-Americans and their non-Hispanic white counterparts use the Internet for different purposes (Kretchmer & Karveth, 2001 in Tavani, 2007). According to the study, African-Americans are less likely to use the Internet to stay in touch with family or to shop. But they do search for information about jobs and health, and as such, are affected by reduced access to information in general, and, in particular, information about themselves.

This is vital, because information that was formerly isolated and in separate and costly-to-reach locations is now readily available – sort of.

AMERICANS ONLINE (like it or not) -

Perelman addresses the ways in which business is working to leverage computer and telecommunications to profit from information at the expense of those who possess it – workers. And increasingly, that label includes anyone who is not among the wealthiest of the wealthy. For the purposes of this discussion, upper middle class individuals are just as vulnerable as those at the bottom of the socio-economic ladder.

This is due to what Perelman describes as the growing phenomenon of advanced accumulation, by which information, some formerly available to the public, becomes privately held. That information, gathered by a single company here and a single company there, is combined as corporations within and across industries consolidate into mega-conglomerates. The result of advanced accumulation is a level of information asymmetry that is unprecedented. Corporations and those inside them have and are able to exchange information about individuals; the individuals in question have no way of finding out what that information is or how it is being used.

Technologies such as Clickstream allow site owners to locate and track the individual movements of site visitors, when they visit and what they look at (Marshall, 2001). This is one method of gathering information to be used in data mining, the process of analyzing data from a variety of perspectives and discerning patterns that enable their creators to construct all kinds of consumer profiles. Profiles can be innocuous, as in the case of a grocery store that used Oracle software to analyze buying patterns and discovered that men who bought diapers on Thursdays and Saturdays also bought beer. (Data Mining Tutorial, 2008). But data mining can cause damage. Herman Tavani posits the case of a bank customer who takes out an expensive car loan. He willingly provides the bank with the information necessary to determine whether he is a good risk, and is approved. Subsequently, the bank runs queries of various customers, and he matches the profile of an at-risk customer. Although his particular situation is stable, the bank determines that he is at risk for defaulting on his loan (Tavani, 2007).

Although the bank customer provided his financial information willingly, it has now been used in a way he did not anticipate or sanction. These uses of personal information constitute breaches of privacy and are, at the very least, unethical. Information provided by mutual agreement for a specific purpose should be used only for that purpose. Any other use than that for which it was explicitly granted constitutes a violation. But it is not illegal for companies who have this information to use it in this way.

It's an ideal situation, if you're on the right side of this particular digital divide.

"Although the public relies on the purveyors of information for information about the information economy, they are naturally reticent about informing the public about the nature of this process…given the asymmetric situation in which those who control information have virtually unlimited information about individual people while they erect dense curtains of secrecy around their own activities, struggles against advanced accumulation are far less straightforward than the earlier resistance against primitive accumulation. At least the peasants knew what they were up against when they protested the theft of the common land (Perelman, 1998)."

If it weren't enough to have to wonder about what information is collected and aggregated about you based on anywhere you've ever been on (or off) the

Internet, don't even think about what happens if someone has a bad data-entry day at your expense. Back in the days when "common land" consisted of handwritten or typed paper files placed in manila folders and stored in on-site cabinets, people were able to reality-check their contents. Now, with data entry and computerized files that are electronically transmitted to multiple locations, correcting the errors in on-line documents – provided they are discovered – is generally seen as the responsibility of the person about whom the mistake is made. And doing so is, at the very least, cumbersome and at worst, expensive and stressful.

Two examples illustrate the ways in which in which the digital divide - as commonly understood - and social class come into play.

HIGH STAKES MISTAKES

"Mary," an unemployed 49-year-old African-American woman, signed up with a temp service looking for clerical work. Her prior experience included long-term employment in an office. Her educational background was an associate's degree in office technology, in line with her aspirations, and she was enrolled in an accounting program at a local technical college. Mary passed the office skills tests with flying colors and received a call from the agency within 24 hours of her first appointment. They wanted to place her in a long-term assignment with a local company. But first, they needed her consent to perform a background check. Three weeks went by, and Mary's repeated calls to find out what was holding things up were met with "We're just waiting for one more document."

When they finally called her back, it was to ask about a bankruptcy filing and a criminal prosecution – both in a state where she'd never lived. Mary did not get the placement; the agency has not called her back. She requested and received a copy of the background check, but has no Internet connection at home and doesn't know where to begin in order to get the erroneous information off her report. She continues to look for work, but has been unable to find a job.

Terry Gross, by contrast, is employed. As the host of Fresh Air, a long-running syndicated radio show broadcast on National Public Radio, it's safe to assume that she is at least upper middle class, and based on photographs, appears to be a non-Hispanic white woman in her 50s. On a recent show, she described how a personal situation had sparked the idea for that day's interview. Her husband's credit report showed that he was deep in debt, owed child support to another woman, and was delinquent on a car loan he didn't have.

"It was easy for my husband to convince me that the agency had made some big mistakes," Gross said. "It was much more difficult to convince the agency (Fresh Air, 2008)."

Both women had essentially the same problem. They discovered mistakes on documents that could negatively affect their lives. But Gross had the resources to seek out – and pay for – professional help in solving the problem. She and her husband hired a lawyer.

She also used the experience to educate herself and others. Her guest on the show the day she told the story was Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard University.

Warren talked about some surprising uses of credit reports. Car dealers access credit reports and quote prices on that basis – even if the buyer is paying cash. She said experts estimate that approximately 70 percent of employers check credit reports before making hires, and do not hire people with bad credit. Many landlords do the same, and utility and cell phone companies offer different plans and demand different deposit amounts from consumers whose scores they deem unfavorable.

Warren also informed Gross that her husband's situation was not unusual. Of the 80 percent of reports with errors, 25 percent are large enough to affect the consumer's credit score. If that consumer is married and lives in a community property state, the spouse is also affected. Errors can happen when someone types in the wrong digit on a social security or credit card number, and the mistakes pile up from there.

“Their view is that it becomes truth and now it’s up to your husband to pry that thing out of there,” Warren told Gross. “They don’t have a lot of incentives to spend a whole lot of money to drive those errors out of the system. They’ve managed so far to make that the customer’s problem rather than the company’s problem (Warren, 2008).

The same applies to Mary’s situation. But while Gross was able to go to the credit bureau to fix the problem, Mary wasn’t sure where to turn. Gross’s socioeconomic status made it possible for her to hire a lawyer, and to be reimbursed for her fees once the matter was settled. That’s because on page 62 of the 86-page Fair Credit Reporting Act is a clause requiring any agency bound by FCRA perpetrating an error to pay court costs and attorney’s fees : “in the case of any successful action to enforce any liability under this section” (FCRA, 1978). Gross was able to front the costs and willing to pay out of pocket to have her husband’s name cleared up. Most people in Mary’s situation would not consider hiring a lawyer. If they did, they would probably dismiss it as unaffordable. Most likely, they are unaware of the FCRA rule, which requires that the consumer hire the attorney and be reimbursed only after the case is determined.

VOLUNTEERS NEEDED FOR LAWFUL DISCRIMINATION

The FCRA reimbursement rule only applies to inaccurate information. If Mary has delinquencies on her report and an employer turns her down because of it, she has no legal recourse. If she becomes a finalist for a job and an employer wants to run a background check, she can refuse. But the employer can then refuse to hire her because she wouldn't agree to the background check. If she submits to the background check and her credit score is too low for the employer's taste, again, the employer can refuse to hire her.

Who, besides a potential employer, can request a background check? According to PreScreen America, one of the largest background check companies in the U.S, the FCRA states that background checks can *only* (italics mine) be ordered by the following people, institutions, companies or agencies: The consumer – in writing, a court or federal grand jury subpoena; by state and local officials to determine, enforce or modify child support payments; to extend credit after the consumer has applied for it; to review or collect an account; to review a consumer's account to determine whether s/he continues to meet the terms of that account; for employment, including hiring and promotions – provided the consumer has given permission; for underwriting insurance for which the consumer has applied; for a legitimate business need in connection with a consumer-initiated transaction; to determine a consumer's eligibility for a license or other benefit granted by a government agency that is required to consider the applicant's financial responsibility or status and; by a potential investor, servicer or current insurer in a valuation or assessment of the credit or pre-payment risks associated with an existing credit obligation. Additionally, "creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance (PreScreenAmerica, 2008)."

In other words, once you've applied for an apartment, utilities and a telephone, the landlord, utility and phone company can pull your information at will, and if someone buys your building or the phone company gets sold, those people can pull it, too. And if they don't like what they find, they can cut you off. Note, also, that the FCRA authorizes the release of "certain" consumer report information, so that marketers looking to sell you things can decide whether you are a worthy suitor.

What else can anyone with permission to do a background check discover about you, provided you've given permission and they're willing to pay?

According to ChoicePoint, another major background-screening company (which, btw, just merged with Reed-Elsiver, owner of Library Journal), they can check their National Criminal File, which contains more than 100 million criminal record convictions across the United States. They can also conduct an in-person local search for felony and misdemeanor information in the municipality of the seeker's choice; attempt to locate you among sex offenders who are not required to register in the state where they currently reside; verify your personal and/or business references; conduct interactive searches of available on-line databases for your listed social security, telephone, previous addresses, and make sure you are not a fugitive or impersonating someone who is dead. Additionally, they can verify your educational credentials, employment history and any professional licenses. All can be turned around within three to five business days for a total cost of approximately $112 (slightly more to check more than one employer or educational institution) (ChoicePoint.com, 2008).

WHAT NOW?

While the European Union has adopted a directive on protecting personal information, Congress has done little to protect individuals from being victimized by their own information. Other than passing HIPAA in 2003, which provides some security for medical records, Congress has been more concerned with mollifying business, which, as discussed above, has more than a passing interest in ensuring that the information it controls remains that way. A 2001 report by Patrick Marshall stated that opposition to a federal privacy law tends to be industry-specific rather than comprehensive (Marshall, 2001).

There may not be one Great and Terrible Oz. But if there are a lot of men behind curtains, each fighting to hang on to his or her piece of the informational pie, a united group of advocates fighting for a comprehensive law that effectively addressed the issue of personal information could theoretically achieve their aims while their opponents fight on single fronts.

One of the most sensible responses to the explosion and exploitation in on-line personal information was put forth by a group of academics from Massachusetts Institute of Technology, Yale and Rensselaer Polytechnic Institute. Rather than privacy, they advocate for information accountability. Putting the online personal information genie back in the bottle will not work, they say. Rather, "the use of information should be transparent so it is possible to determine whether a particular use is appropriate under a given set of rules and that the system enables individuals and institutions to be held accountable for misuse (Weitzner, et al, 2008)."

This notion doesn't address the fundamental issue of information ownership. But it's a start. And it could provide a mechanism that would enable Mary, Terry Gross, and those of us who aren't part of the 13,400 wealthiest families in America a fairer shot at achieving our hearts' desires – without having to melt a witch.

References

Correspondents of the New York Times, (2005). *Class Matters*. New York, NY: Times Books.

Fussell, P (1983). *Class: A guide through the American Status System*. New York, NY: Touchstone.

Perelman, M (1998). *Class Warfare in the Information Age*. New York, NY: St. Martin's Press.

Weitzner, Daniel, Abelson, Harold, Berners-Lee, Tim , Feigenbaum, Joan, Hendler, James, & Sussman, Gerald Jay (2008). Information accountability. *51*, 82-87.

U.S. Department of Commerce. (2005). *Computer and Internet Use in the United States* [Report]. Washington, DC: Jennifer Cheeseman Day, Alex Janus, Jessica Davis.

Perelman, M (2006, July-August). Some economics of class. *Monthly Review*, *58*, Retrieved July 25, 2008, from http://monthlyreview.org/0706perelman.htm

Marshall, P (2001, June 15). Privacy under attack. *CQ Researcher*, *11*, Retrieved July 17, 2008, from http://library.cqpress.com/cqresearcher/cqresrre2001061500

Data mining: What is data mining?. Retrieved July 5, 2008, from www.autonlab.org Web site: http://www.autonlab.org/tutorials/

Tavani, H (2007). *Ethics and technology*. Hoboken, NJ: John Wiley & Sons, Inc.

United States Congress. (1973). *Fair Credit Reporting Act* [Brochure]. Washington DC:

Retrieved July 22, 2008, from prescreenamerica.com Web site: http://www.prescreenamerica.com/obligationsofusers.pdf

Product Information. Retrieved July 19, 2008, from ChoicePoint Web site: www.choicetrust.com/xsl/home/hotjobs/prodinfo.htm

Gross, Terry & Warren, Elizabeth, July 1, Your credit report: Know its perils, keep it clean, *Fresh Air*, retrieved July 2 from http://www.npr.org/templates/rundowns/rundown.php?prgId=13&prgDate=7-1-2008