



August 22, 2016

U.S. Customs and Border Protection
Attn: Paperwork Reduction Act Officer
Regulations and Rulings
Office of Trade
90 K Street NE
Washington, DC 20229

Re: Comments on Proposed Information Collections Pursuant to the Paperwork Reduction Act of 1995

To Whom It May Concern:

On behalf of the Center for Data Innovation (datainnovation.org), we are pleased to submit these comments in response to U.S. Customs and Border Protection's (CBP) request for comments on its proposal to collect social media account information for travelers from other countries entering the United States.¹

The Center for Data Innovation is the leading think tank studying the intersection of data, technology, and public policy. With staff in Washington, DC, and Brussels, the Center formulates and promotes pragmatic public policies designed to maximize the benefits of data-driven innovation in the public and private sectors. It educates policymakers and the public about the opportunities and challenges associated with data, as well as technology trends such as predictive analytics, open data, cloud computing, and the Internet of Things. The Center is a nonprofit, nonpartisan research institute affiliated with the Information Technology and Innovation Foundation.

BACKGROUND

The Department of Homeland Security (DHS) has proposed asking foreign travelers entering the United States under the Visa Waiver Program, a program which allows citizens of certain

¹ "Agency Information Collection Activities: Arrival and Departure Record (Forms I-94 and I-94W) and Electronic System for Travel Authorization," U.S. Customs and Border Protection, June 23, 2016, <https://www.federalregister.gov/articles/2016/06/23/2016-14848/agency-information-collection-activities-arrival-and-departure-record-forms-i-94-and-i-94w-and>.



countries to travel to the United States for 90 days or fewer without prior authorization, to provide information about their social media identifiers.² According to the proposal, “[c]ollecting social media data will enhance the existing investigative process and provide DHS greater clarity and visibility to possible nefarious activity and connections by providing an additional tool set which analysts and investigators may use to better analyze and investigate the case.”³

Specifically, DHS proposes to add an optional question to the Electronic System for Travel Authorization (ESTA) and Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record). ESTA is an automated system used by CBP to automatically verify the eligibility of all travelers entering the United States by air or sea under the Visa Waiver Program. CBP checks information submitted to this system against law enforcement and counterterrorism databases, as well as INTERPOL databases, to ensure that individuals who pose a threat to national security are unable to board a plane or ship bound for the United States.⁴ Applicants who are found to be ineligible may still apply for a visa to travel to the United States.⁵ Since travelers entering the United States under the Visa Waiver Program at land border crossing do not have to provide advanced notice, instead of providing information to ESTA, they can complete Form I-94W. The final decision about whether to admit travelers upon arrival is made by CBP agents.⁶

DHS SHOULD COLLECT SOCIAL MEDIA INFORMATION, BUT EVALUATE ITS EFFECTIVENESS BEFORE USING IT IN PRACTICE

An individual’s online activities, particularly social media, can reveal important information about that person. This is one reason why organizations use social media data to make important decisions, such as whether to hire a job applicant, extend a loan to a potential borrower, or admit a student to a university.⁷ Similarly, DHS can potentially use social media

² “Visa Waiver Program,” U.S. Department of State, accessed August 22, 2016, <https://travel.state.gov/content/visas/en/visit/visa-waiver-program.html>.

³ Ibid.

⁴ “U.S. Visa Waiver Program,” U.S. Department of Homeland Security, accessed August 22, 2016, <https://www.dhs.gov/visa-waiver-program>.

⁵ “Official ESTA Application,” U.S. Customs and Border Protection, accessed August 22, 2016, <https://esta.cbp.dhs.gov/esta/application.html?execution=e1s1>.

⁶ “Electronic System for Travel Authorization,” U.S. Customs and Border Protection, accessed August 22, 2016, <https://www.cbp.gov/travel/international-visitors/esta>.

⁷ Kimberlee Morrison, “52% of Recruiters Check Social Media During the Hiring Process [Infographic],” *SocialTimes*, March 24, 2015, <http://www.adweek.com/socialtimes/52-of-recruiters-check-social-media->



data, such as a person's Twitter activity, Facebook postings, or LinkedIn profile, to more effectively screen people traveling to the United States. These online profiles can contain corroborating information about a person's identity, location history, line of work, and other relevant factors to the traveler screening process.

DHS is unable determine if it can effectively use social media data to screen travelers unless it first conducts a pilot program. It is therefore prudent for DHS to proceed with this data collection to study the effectiveness of such an effort, but it should refrain from using the data on a widespread basis until it can verify that it has produced a system that delivers useful results. As part of this pilot study, DHS should evaluate the impact on travelers, CBP agent productivity, and national security, including false positives and false negatives generated by the system. To ensure that DHS appropriately protects civil liberties, the design of this system as well as the review of its impact should include extensive consultation with the Office for Civil Rights and Civil Liberties as well as the input from the Privacy and Civil Liberties Oversight Board. To the extent it is practical and does not compromise national security, DHS should also publicly release the results of any evaluation it conducts so as to create more transparency in this process. DHS should also work continuously with the private sector to optimize and improve the accuracy of any systems it uses to analyze or make predictions with this data.

There are many ways that DHS may be able to develop tools to use social media data to meaningfully improve its investigation and vetting process. For example, tools that can automatically extract location data from a Twitter user's recent public posts can help DHS verify that a person attempting to enter the United States was truthful about his or her travel history. These types of tools may help improve the travel experience for visitors as well as increase the productivity of CBP agents.

There are a number of challenges to using social media data that DHS will need to address. First, travelers with "something to hide" would likely not provide the requested information, especially since this information is voluntary. Second, there is no method to ensure that social media profiles contain accurate, objective, or timely information, as social media pages are easily falsifiable. Third, a significant amount of social media data is would be unusable because

during-the-hiring-process-infographic/617525; Stephanie Armour, "Borrowers Hit Social-Media Hurdles," *The Wall Street Journal*, January 8, 2014, <http://www.wsj.com/articles/SB10001424052702304773104579266423512930050>; Emmanuel Felton, "The New Tool Colleges Are Using in Admissions Decisions: Big Data," *PBS NewsHour*, August 21, 2015, <http://www.pbs.org/newshour/updates/new-tool-colleges-using-admissions-decisions-big-data/>.



it is posted privately and would not be accessible to the U.S. government. Fourth, there are a wide variety of sites and services that may be considered social media platforms, including social networks, micro-blogging sites, video sharing platforms, commenting tools on websites, gaming communities, listservs, and dating websites. DHS has not clearly specified which social media platforms it is interested in, and the quality, format, and availability of data across these different platforms will vary widely, not to mention the language. Finally, many people do not have a social media presence or only have a limited one.⁸

While using social media data presents many challenges, these are not necessarily insurmountable or unique. For example, CBP already must handle the problem of determining whether the information submitted by travelers in response to other questions is accurate and complete. In addition, while using social media data may not be effective in screening all passengers, it may still be effective in enough situations that its collection and use is warranted. CBP should be allowed, and indeed encouraged, to investigate this potential opportunity to better use publicly accessible data to improve the effectiveness of its operations.

CONCLUSION

It is encouraging to see DHS explore new ways to use data to improve how it vets travelers entering the United States. While it remains to be seen whether DHS can effectively use social media data for this purpose and any implementation should undergo a thorough review, these types of innovative practices should be encouraged within the federal government.

Sincerely,
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⁸ Daniel Castro, "The Rise of Data Poverty in America," Center for Data Innovation, September 10, 2014, <http://www2.datainnovation.org/2014-data-poverty.pdf>.