

## **What the Trend in Online Databases Means to the Employment Screening Industry**

The most prominent trend in the employment screening industry has been a proliferation of online databases offering cheap background checks. Any one can access the internet and with a quick search be able to purchase, for example, criminal records for a low fee. While that is very appealing to companies looking to trim the budget on background checks, it may in fact be a dangerous trend.

What do the companies say that have been running background checks, back when employment screening “industry” was just a concept and not an accepted practice?

*Tom Lawson, the founder of APSCREEN, the oldest screening firm in the country, says “The necessity of a background check has been established now, and that’s why we are seeing such a proliferation of people getting into the business – particularly because the internet makes it an easy field to enter because of the low start-up costs.”*

*Lawson continues, “But back in 1980, when we practically invented the concept of employment screening, companies had to be convinced that there was a good reason to spend money on background checks. We have always been a business that focused on training our specialists to screen applications for completeness, thoroughness and accuracy and provide our customers with individualized service. This trend of online databases is very disturbing to us because the potential for error and liability is very high.”*

### ***The Dangers of Databases - Caveat Emptor of the Quick Turnaround***

Databases are only as good as the search logic used to retrieve stored data, and search logic is expensive and only as good as the amount of money the database companies are willing to invest in it. Unfortunately, the advent of the internet has made starting an online business easy for anyone. As a result, many companies that start an internet “data selling” business do so because the start-up costs are small which means the databases *can only* provide limited information.

Even worse, most online database providers lack an intimate working knowledge of how to screen potential applicants. Their focus is on selling units of information for profit.

Database companies cannot simply use off-the-shelf software to retrieve publicly compiled repository information. It comes in too many proprietary “operating systems’ and while good, expensive search logic helps to delineate between the different languages of the information entered into the database company’s archival system, it can NEVER be 100% “competent”, even if it is a very “robust” retrieval architecture.

By the sheer science of databasing, 100% information retrieval capability is impossible, *unless* (as demonstrated recently by the IRS and FBI Computer fiascos) the “source” data originates from wholly compatible systems. This means that going in you can never expect to have a complete file when you compile data from different systems. This results in “data drops” in which bytes of information mysteriously disappear, as well as computer viruses which can reside undetected in mainframes for years and indiscriminately wipe out data, which would be undecipherable in a foreign operating environment, such as a third party compiler.

A classic example of this occurred on January 17, 1990, when screening client District Cablevision received a now infamous incorrect report of a felony cocaine conviction on one James Russell Wiggins, which was not verified for accuracy or its relationship to the subject Wiggins, and which resulted in a serious elimination of candidacy lawsuit brought against the provider based upon slander. This error dealt a major blow to the reputation of the provider and resulted in the payment of a substantial monetary settlement. (US District Court, District of Columbia; Civil Action 90-199; Wiggins (et al) v. Equifax Services, Inc. (et al).)

Database companies outnumber legitimate employment screeners almost 75 to 1 in the industry today.<sup>1</sup> The main problem with such vendors who advertise “nationwide criminal checks,” “statewide criminal checks,” “instant”, or “online,” is the veracity of the data they are selling and the competency of the search used to retrieve the data.

Many vendors acquire data from a multitude of sources, not having any idea who compiled the information in the first place. This data is then combined into each vendor’s own format, which often does not contain complete information. The common term in the database industry is “data drops,” which in addition to the above meaning also means that not all of the data, such as criminal record information from a court jurisdiction that is put into the database, is available to be extracted, retrieved or researched. This occurs because of the following:

1. The bridge software used to import the jurisdictional data into the database company’s memory banks *can never be* 100% reliable, as long as the compiler is gathering information from “foreign” repositories

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<sup>1</sup> Ernst, Carl R., Sankey, Michael, Eds, *The Source Book of On-Line Public Record Experts*. 1996

2. The computer has to handle many different formats while compiling information into a standardized format so that some of the data simply does not transfer.

This is a problem because of the technical department's inability to inform the sales/marketing department properly as to the database's limitations or unwillingness to tell the customer that the product it is selling may be deficient in some areas. As a result, approximately 5 to 8% of the data is lost. That means that there is a 92% to 94% chance (at best) to identify a record on a candidate. Also, data drops are indiscriminate. Rape convictions are dropped as easily as traffic tickets.

The second problem with databases is the psychological dependence they engender on those using them. As time progresses, the databases' ease-of-use causes the user to forget just how important it is that the database be accurate and complete, and that the need for thoroughness in screening an employment candidate should *never* vary, as to ensure consistency in the screening process, thus precluding the successful prosecution of the employer for Title 7 claims. The results of falling into this pattern of laziness can be disastrous as litigation may not be far behind.

### ***Crucial Steps in the Employment Screening Process***

Historically, and until the late 1970s when the "personnel" department recognized the need to get involved in employment screening, background checks were performed by security departments – typically comprised of highly qualified, and often retired professionals.

Today it's up to the HR department to create the mandatory steps needed to develop a thorough employment screening procedure including for starters, a positive candidate identification process. If this isn't the first step in the background check, the results of your searches could be faulty and therefore prove useless.

For example, critical identification data needs to be gleaned from credit bureaus and other repositories including unused maiden names, or intentionally omitted information such as date of birth and variations in social security numbers. This is where the difference between true employment screeners and data sellers comes into play. It takes years of experience to be able to differentiate, for example, *intentionally* omitted information versus an honest mistake.

The same holds true for incomplete disclosures such as partial criminal history in which the full story can dramatically change your assessment of the applicant. One such case involved an applicant who disclosed to the company that she was convicted of trespassing. When the criminal check came back, however, it was discovered that while she had indeed told the truth that she was convicted of

trespassing, she had also been convicted of trafficking in child pornography and possession of controlled substances – *a serious error by omission*.

Hiring decisions must not be made on partial, incomplete or incorrect data, but on thorough information and a consistent application of thorough scrutiny of *all* of the information regarding criminal, credit, work and education history, driving attitude, whether or not the candidate has completed the application completely, as well as identity disclosure.

A screener must have *extensive knowledge* about each vendor source to make the appropriate follow-on decisions that develop into a full and comprehensive report.

Online databases don't provide highly trained researchers who can spot "red flags" and other indicators in an application that demand further consideration. You can only get this kind of service from an interactive screener who has years of experience in processing background checks.

Another reason online databases can be cause potential liability is because most databases contain information that *may* not be used in the screening process such as arrest records, or unadjudicated matters, or matters for which an expungement exists at the Court but is not reflected in the database.

As previously stated, professional background checks require an experienced researcher who knows what to look for including: verifying a applicant's true identity, obtaining verification of past employment and education, fully investigating the applicant's criminal past (a skill that requires an intense, and multi-level knowledge of court procedures, credit evaluation including legal records such as bankruptcies, tax liens and judgments, driving analysis, as well as a history of being a sex offender or involved in domestic violence or retraining orders for stalking. All of the factors contribute to, but may not necessarily be germane to the job description, at hand, and while exciting, could lead an employer into court, for using the information to deny candidacy, for inapplicability.

By now it should be fairly clear that professional background checks are a comprehensive package that far outweigh any "bits and pieces" of information that can be provided by any individual online database. When a person is thinking about hiring someone and they believe that "all I really need to do is run a fingerprint check," they are really missing the point. So much more information is needed to make a careful, informed hiring decision. Besides, only police departments run fingerprint checks, not employers.

### ***Liability Risks of Not Performing Background Checks***

In today's hiring environment employers face ever increasing potential for liability from the workplace when they choose *not* to do background checks on their news hires. Those liabilities include:

- Premises liability for not safeguarding customers from employees who steal, lie, cheat or injure
- Negligent hiring liability in the event of violence or fiduciary malfeasance, for not providing other employees a safe place to work
- Termination or investigation of the individual who hired an applicant who later steals from the company or exposes the company to the above-mentioned liabilities.
- Litigation under officer/director liability theories because of incompetent or inept hiring practices involving the company and/or person who hired the employee

To prevent this type of litigation, a company must have established a refined HR policy that includes a professional employment screening component.

You must become knowledgeable about employment laws which a good background screener can help you with. For example, did you know that it is illegal to make a decision to not hire someone based on an arrest record alone? Usually, the only time it is legal for a third-party provider to release arrest information is in the case of daycare providers and nuclear facility workers. An employer, generally is not allowed to ask about arrests and cannot use this information to deny employment

### ***Critical Tips For Choosing an Employment Screener***

So what should you be looking for in an employment screening company?

First of all, look for longevity. The longer a company has been providing background checks, the more experienced it is, and as a result, the knowledge, they will have in recognizing the signs of a "suspect" applicant. This is a field where screeners need not only be highly trained, but have extensive experience.

Ask for references and then call them. You want a company with an extensive and positive track record of providing factual information so you can make an informed hiring decision.

Look for the company's professional memberships in organizations such as ASIS, SHRM, PIHRA, NPRRA, NAPBS, as well as others. This indicates a combined knowledge of the screening and security industries.

Do you as the hiring company; have a complete knowledge of employment law? If not, you need your screening company to know the laws involving background checks. It is extremely beneficial if you hire a company that has an acute knowledge of “negligent hiring” practices, much in the way that an Expert Witness would know.

The company should have an intimate, thorough and long-term knowledge of the Fair and Accurate Credit Transactions Act (FACTA), and the Fair Credit Reporting Act (FCRA), as well as Sarbanes-Oxley, the Gramm-Leach-Bliley Act, and the myriad local statutes that may or may not apply to the employment process. They should also have the ability to testify for you in a court of law if need be; or even better, keep you out of court in the first place!

Does your prospective screener have knowledge and understanding of current HR management systems? How about corporate due diligence programs or factual employment screening programs that train people to find fraudulent applications and false identities?

Are you beginning to see how there is so much more to background checks than first meets the eye?

In short, can your vendor help keep you from unwanted litigation? Unless you or someone in your company is an expert in employment law, you are putting your company at significant risk by using an online database provider. If you are using any of the multitudes of online databases, it's not likely you are protected.

Not only do these online companies increase your risk of exposure, they may even add to it. For example, let's say you are currently using an employment screener that does not require you to provide a signed release for each applicant. Sounds relatively harmless, doesn't it?

The truth is what these companies have done is had you waive liability to them when you signed up for an account so they can avoid the time and effort it takes involved in this critical step. Their focus is on increasing their sales; which isn't necessarily in your company's best interest.

In the case of a credit bureau audit, your company is now responsible for producing an original signed application and therefore also liable if you don't have one on file. A good employment screener is not only a long-term certified credit bureau, they also provide signatures for these audits on a regular basis and you should never even know when these audits occur. A typical lawsuit of this nature could cost your company six figures. There is no upside for a company purchasing background checks to take this kind of risk.

What type of criminal conviction research, hand-researched or online databases, does the company provide? Most companies do not realize that there is

absolutely NO single source of information available regarding criminal convictions. It doesn't exist – anywhere. Do they verify these discoveries against subject identifiers and if so, how?

Does your online provider claim to have worker's compensation claim records? Any information provided regarding worker's compensation claims potentially provides a false sense of security for the user. The truth is the only records available for worker's compensation are appeals, not claims, and much of the available files are sealed because they are not as yet adjudicated. This means the file competency rate for this type of data is about 40% – *not good enough*.

Does the employment screener have international research capability? If not, how will they screen people you might want to hire from overseas? Without the kinds of connections and a network of relationships developed over long periods of time, this information would be almost impossible to get.

Has the company you want to hire ever been involved in a litigation themselves for improper screening processes? Can they provide you with at least three long-term references? Do they have professional liability insurance including errors and omissions? Are they FACTA, FCRA; CRRRA, and G-L-B compliant?

And of course you need to know the practical things such as cost, turnaround time and reporting method. Many competent employment screeners are listed in publications such as the Security Industry Buyers Guide as well as industry publications such as those connected with the Society of Human Resource Management (SHRM) and the American Society for Industrial Security (ASIS).

What is needed now in this industry is a standardization of compliance for employment screeners and someone to step up and create an industry co-operative that can police it.