

## SOCIAL MEDIA SITES AND UNDERWRITING

By Marie-Andrée Weiss

If you are in the market for life insurance, and would like to get a good rate, maybe you should stop checking web pages featuring fatty foods, fast cars, or share your concerns about your high blood pressure on social media sites. On the other hand, if you usually surf the web to find recipes whose main ingredients are tofu and flax seeds, or if you registered online for the 10K meet of your local Masters Swimming Team, you may be pleasantly surprised by the lower premium offer extended to you by insurance companies.

The *Wall Street Journal* reported in November 2010<sup>1</sup> that insurance companies are using the digital files of personal information gathered by data aggregation companies to evaluate whether an insurance prospect is a high risk or not. A life insurer is interested in knowing whether the prospect has a higher than average or below average life expectancy. In order to assess the risks, insurers traditionally relied on physical exams and questionnaires during the life insurance underwriting process. However, this traditional method is costly. Licensed health professionals employed by the insurer may have to visit the prospect's house to gather medical samples, perform drug testing, and gather the answers to a medical questionnaire.

A more cost-effective method is "predictive modeling." Is the prospect likely to develop a serious medical condition? Does he engage in dangerous activities? Predictive modeling mines data compiled by data collection companies to find the answer. This method is not only used by insurers, but also by banks or credit card companies to assess whether it would be profitable to extend an offer to a particular prospect.

Insurers and banks may also use network analysis programs and sites which analyze social network data. Specialized software and data aggregating sites are available to companies eager to use the constantly-updated flow of social media data to forecast marketing trends, identify their customers' needs, and predict risks. Jeremiah Owyang, a marketing professional, wrote a blog post last June where he predicted that insurance companies will soon use social media sites data to assess which rate should be extended to a prospect.<sup>2</sup> According to an article recently published by *The Economist*, some financial firms identify who could be a borrowing risk by using SAS software<sup>3</sup>, which analyzes both an applicant's social network and her Internal Revenue Service records. The article also mentions that some insurers are offering better premiums to banks using such software to protect themselves.<sup>4</sup> However, insurers tempted to use social media sites to check whether a claim is legitimate may be well advised not to move to have access to the social media account of the interested party, as courts may view this as a "fishing expedition," the terms used in November 2010 by the New York

Appellate Division Court, which affirmed a lower court order denying as overly broad an insurer's motion to access the Facebook Page of a woman who had been injured in an accident involving one of the company's insured. However, the lower court had "abused its discretion in prohibiting defendant from seeking disclosure of plaintiff's Facebook account at a future date."<sup>5</sup>

Even if this method lowers both cost of underwriting borne by companies and perhaps the cost of premiums borne by consumers, it does also raise privacy concerns. Is this practice regulated by any U.S. law? The *Wall Street Journal's* article quoted Rebecca Kuehn of the Federal Trade Commission as saying that using information sold by marketing-database firms during the life insurance application process would "raise questions" as to whether such practice would be subject to the Fair Credit Reporting Act (FCRA). Indeed, the FCRA defines a consumer report as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness (...) credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (...) credit or insurance to be used primarily for personal, family, or household purposes." 15 U.S.C. § 1681a(d) (1)(A). Data collection firms fit the definition of a "consumer reporting agency" under the FCRA as being "any person which, for monetary fees (...) regularly engages (...) in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties (...)." 15 U.S.C. § 1681a(f).

If this data is subject to the FCRA, then a banker or an insurer who would take an adverse action based on this data would have to disclose it to the prospect. Such an adverse action under the FCRA is the "denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance." 15 U.S.C. § 1681k(1)(B)(i).

One of the privacy round tables held by the Federal Trade Commission (FTC) this year explored the privacy implications of social networking, and noted that, as the number of third-party applications enabled to access social media information grows, it is important that consumers understand how their data is being shared.<sup>6</sup> Following the roundtables, the FTC recently published a preliminary staff report proposing a normative framework applying to companies collecting data and sharing consumer data.<sup>7</sup> One of the report's propositions is to provide consumers with simple ways to express their data privacy choices. Companies should also make their data practices more transparent to consumers.

It will be interesting to see if, as social media users become more aware that information they so readily share on social media sites may be eventually be used by business

companies, they will use the full range of privacy settings already offered by social media sites, and even ask for tighter privacy options, or whether federal and/or state laws will be enacted to regulate the use by banks or insurers of social media data for underwriting purposes.

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<sup>1</sup> <http://online.wsj.com/article/SB10001424052748704648604575620750998072986.html>

<sup>2</sup> <http://www.web-strategist.com/blog/2010/06/14/how-insurance-companies-will-influence-rates-based-on-your-tweets>

<sup>3</sup> <http://www.sas.com/news/preleases/sas-social-media-analytics.html>

<sup>4</sup> <http://www.economist.com/node/16910031>

<sup>5</sup> *McCann v. Harleysville Ins. Co. of N.Y.* (4th Dept 11-12-2010). 2010 NY Slip Op 08181

<sup>6</sup> [http://www.ftc.gov/bcp/workshops/privacyroundtables/PrivacyRoundtable\\_Jan2010\\_Transcript.pdf](http://www.ftc.gov/bcp/workshops/privacyroundtables/PrivacyRoundtable_Jan2010_Transcript.pdf), p. 22

<sup>7</sup> <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>