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Subject: CBP Fails to Meaningfully Address Risks of Gathering Social Media Handles

Posted by [CyberkNight](#) on Thu, 15 Sep 2016 14:24:15 GMT

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Last month we submitted comments to Customs and Border Protection (CBP), an agency within the U.S. Department of Homeland Security, opposing its proposal to gather social media handles from foreign visitors from Visa Waiver Program (VWP) countries. CBP recently provided its preliminary responses ("Supporting Statement") to several of our arguments (CBP also extended the comment deadline to September 30). But CBP has not adequately addressed the points we made.

1) We argued that the proposal would be ineffective at protecting homeland security, because would-be terrorists seeking to enter the U.S. under the VWP are unlikely to voluntarily provide social media handles that link to incriminating posts that are publicly available. In its Supporting Statement, CBP said:

Extensive research by DHS and our interagency partners has determined that these additional data elements will increase the ability to stop these travelers before they attempt to travel to the United States.

It may help detect potential threats because experience has shown that criminals and terrorists, whether intentionally or not, have provided previously unavailable information via social media that identified their true intentions.

But CBP has not shared its purported "extensive research" or provided any details about its asserted "experience."

Before adopting a new policy with significant privacy and free speech implications, a federal agency should provide the public with the evidence supporting the agency's claims of efficacy. CBP has failed to do so here.

2) We argued that the proposal would violate the privacy and freedom of speech of innocent travelers and their American associates. We also made the point that given the confusing wording of the proposed language ("Information associated with your online presence--Provider/Platform--Social media identifier"), travelers may over-share and turn over not just their handles, but also their passwords.

CBP said, "If an applicant chooses to answer this question, DHS will have timely visibility of the publicly available information on those platforms, consistent with the privacy settings the applicant has set on the platforms."

Yet the agency notably did not say what the government would do if a traveler does provide log-in information that would enable access to private online content.

3) In arguing that the proposal would violate privacy and freedom of speech, we also explained that the proposal is vague and overbroad because it contains no definitions or limitations as to what counts as a "social media identifier," which may lead VWP visitors to share a variety of online accounts that reveal highly personal details about them.

CBP said, "A social media identifier is any name, or 'handle', used by the individual on platforms including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram. Applicants are able to volunteer up to 10 identifiers."

Yet the agency did not say that it would provide such explanatory text on the online ESTA application or paper I-94W form.

4) In arguing that the proposal would violate privacy and freedom of speech, we expressed concern that the government might use the social media information it gathered in unknown and future non-travel contexts to the detriment of VWP travelers and their American associates.

CBP admitted that this will occur:

ESTA information may be shared with other agencies that have a need to know the information to carry out their national security, law enforcement, immigration, or other homeland security functions. Any and all information sharing with agencies outside DHS will abide by existing memoranda of understanding between the agencies and be consistent with applicable statutory and regulatory requirements.

This exacerbates the chilling effect we discussed in our comments. Innocent VWP travelers may engage in self-censorship and cut back on their social media activity--even in their home countries--out of fear of being misjudged by the U.S. government, or of putting their friends and loved ones at risk.

<http://megalexoria.blogspot.com/2016/09/cbp-fails-to-meaningfully-address-risks.html>

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