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**Excerpted from the 2003 *Job Search Privacy Study: Job Searching in the Networked Environment: Consumer Privacy Benchmarks***

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## **Employment Application Kiosks and Sites**

Employment kiosks – small, mobile ATM-like booths – are increasingly being used for screening job applicants. The booths are typically located in malls and at the front sections of retail stores. The booths allow job candidates to pull up a chair, answer a series of detailed questions, and apply for work in about an hour. No muss, no fuss, and no resumes are needed to apply.

In place of a resume, many of the employment kiosks that researchers studied requested that job seekers supply SSNs, date of birth, and the answer to detailed skills and personality questions. Some kiosks also facilitated an instant SSN check and instant background check.

The kiosks are usually equipped with a miniature keypad, phone, mini computer screen, and secure connection. But all too frequently, the kiosks do not come equipped with the most important thing of all: a privacy policy that discusses how a job seekers' SSNs, dates of birth, and questionnaire data are stored, handled, and deleted, among other things.

As such, the rapid deployment and adoption of kiosk technology in the retail sector as the de facto means of applying for work represents some risk to the affected job seekers.

Researchers sampled a variety of kiosks. Due to the large size of the kiosk market, researchers focused their efforts on the dominant company in the sector, Unicru, which has evaluated more than 19.5 million candidates through its kiosks and related Web sites. For reasons of practicality, researchers further focused the research on one national retail company that currently uses the Unicru kiosks.

Research found that:

Unicru kiosks studied did not post privacy policies prior to requiring job applicants to enter SSNs, date of birth, and other highly personal information.

The Unicru kiosks studied did not post or offer a privacy policy to job applicants at any time before, during, or after the kiosk application process.

The specific employer researchers tested failed to fully comply with all measures of the withdrawal of electronic consent for a background check.

## **A. Introduction to the Kiosk Issue**

In order to have a meaningful privacy discussion about kiosk issues, it is important to first address some general questions.

### ***1. What companies are using kiosks to screen applicants, and how many kiosks are currently deployed?***

Retailers, county and city workforce development centers, staffing firms, and other employers have deployed kiosks. Briefly, by way of example:

Blockbuster deployed an estimated 4,000 employment kiosks in the year 2000. Albertson's deployed an estimated 2,300 kiosks across its retail stores in Feb., 2003.

Sports Authority has deployed kiosks in its retail stores nationwide.

Sears has employment kiosks in its retail stores.

JobView has deployed at least 200 kiosks.

Adecco has had at least 50 "jobshop" employment kiosks nationwide.

Los Angeles County has deployed at least 13 job kiosks.

Dallas Fort Worth has 40 job kiosks deployed through the DFW employment centers.

According to Kiosk Magazine, as of 2003, an estimated 350,000 kiosks of all types are installed worldwide. In the U.S., the installation base is an estimated 125,000 total kiosks. One kiosk costs approximately \$35,000 and up.

### ***2. Why are kiosks starting to become a standard for job application in retail stores?***

Proprietary skill and personality testing is being sold as a way to dramatically reduce retail turnover, and touch screen kiosks are being sold as one of the easiest ways to deploy this testing for applicants. Another factor pushing adoption is the instant background check capabilities of the kiosk systems, which appeals to employers concerned about security.

### ***3. What companies are involved in providing services to this market?***

Among the companies providing hardware, software, and proprietary testing services in this market are ERI, NCR (EasyPoint Employment Kiosks) and Unicru. ChoicePoint is among the Consumer Reporting Agencies providing background checking services for kiosk service providers.

#### ***4. How does the kiosk application process relate to retailers' other application processes?***

After testing the kiosk systems, researchers found that in many cases, the kiosk precisely mirrors the online or Web application system of the retail store where the kiosk is located.

### **B. The Role of Unicru in the Kiosk and Retail Job Sector**

Unicru, a Beaverton, Oregon company dominates the kiosk space. Unicru says it processes approximately one job application per second during the average U.S. workday. All totalled, Unicru processes about 6 million job applicants per year, and has processed a total of more than 19.5 million candidate applications. In 2002, Unicru achieved record revenues of \$21.1 million and was recognized as one of the fastest-growing companies in the U.S. It says that it is the leading provider of hiring management systems.

Unicru has developed proprietary artificial intelligence programs that it claims reduces turnover for its clients. It deploys its AI programs on "more than 13,000 on-site application centers and Web-based solutions." That is, kiosks and Web sites.

Job seekers fill out the kiosk applications and take the employment tests, which are submitted directly to Unicru. The tests are graded and the applications are categorized into green, yellow, or red. Reds are automatic discards, and do not get to the interview level with employers.

Marriott, Target, CVS, Bennigans, Blockbuster Entertainment, Metro One, Kroger, Albertson's, Acme Markets, Big Y, The Fresh Market, Jewel, Osco Drug, SavOn, A&P, Farm Fresh, Spartan Stores, Sports Authority, Universal Studios, Southeastern Freightlines, are among the companies using Unicru.

Unicru currently, in addition to personality testing, also performs instant online background checks on applicants in the locations researchers tested.

#### ***1. Methodology***

Because Unicru deploys the largest number of kiosks and has tested millions of employees, and because researchers had physical access to a number of Unicru-driven kiosks, researchers chose to study the Unicru kiosks in detail. Each retail outlet that boasts a Unicru-powered kiosk also has a Unicru-powered Web site. Researchers looked at both mediums.

Researchers, for practical purposes of focusing the study, decided upon Sports Authority kiosks and its associated Web sites to study. Researchers had physical access to four

different Sports Authority kiosks. Researchers applied at the kiosks in person, and researchers applied at the online Unicru-driven Sports Authority Web site. <<http://www.thesportsauthority.com/corp/index.jsp?page=jobs>> .

Researchers applied multiple times, and asked volunteers to apply in other states and report their experiences.

Each screen the researchers saw was recorded and compared with the Sports Authority online site, and was found to be almost identical in terms of the job application process.

After the study was complete, researchers checked the results against other Unicru-powered kiosks at Albertsons retail stores.

## ***2. Where are the Privacy Policies?***

The Unicru kiosks at Sports Authority stores did not post privacy policies. The Unicru section of the Sports Authority Web site did not post a privacy policy. (The Sports Authority Web site did have a separate privacy policy for e-commerce shoppers, but it was not available at the Unicru job application section of the site.)

Specifically, at Sports Authority, a job seeker applying online will not see a privacy policy linked to or available during the job application process. And a job seeker applying at the kiosk in the stores will not see a privacy policy.

No law says that a company must post a privacy policy. But a company that is requesting jobseekers' SSN, date of birth, home phone number, name, residence, employment history, and conducting detailed skills and personality testing would provide great benefit to consumers by providing one.

Unicru, on its corporate Web site, posts a privacy policy. It states that it is a TRUST-e Seal participant. But Unicru does not link to this policy from Sports Authority store kiosks or Web sites.

There is no meaningful way for a job seeker at Sports Authority to read a privacy policy prior to giving up his or her SSN or other data. The principles of Fair information Practices need to arrive at employment kiosks, and quickly.

At the minimum, Unicru and all employers using kiosks should post or provide the following:

- A robust, clearly worded privacy policy that appears on the kiosk screen prior to the point that job seekers are requested to enter any personal data about themselves, including name.

- A clearly posted policy that outlines all of the ways that Unicru and each third party involved in the job application process stores, handles, shares, and deletes user

data.

Written, take-away papers or brochures for job applicants with all relevant contact information for background check companies and any third parties involved in or relevant to the job seekers' transactions with the kiosk.

Kiosks have become part of the employment infrastructure, particularly for retail workers. This piece of the infrastructure absolutely needs to come into line with Fair Information Practices and provide the highest level of privacy notice, disclosure, and openness to job seekers.

### ***3. Problematic Fair Credit Reporting Act Issues***

Researchers physically visited the Unicru-powered kiosks in Sports Authority stores in the San Diego region to check for compliance with the FCRA provisions. In areas outside of San Diego, researchers called each and every store in California and spoke to managers to acquire the information.

Researchers found that the Sports Authority stores with Unicru-powered kiosks do not, practically speaking, provide a meaningful way for job seekers to withdraw electronic consent.

### ***4. What Constitutes Valid Electronic Consumer Authorization for Furnishing a Credit Report?***

When job seekers apply at a Unicru kiosk at Sports Authority, they walk through a series of screens in which they agree electronically to allow Edge Information Management to conduct a background check on them. (See Appendix A for the screens.)

The exact wording of these screens is critically important because the Fair Credit Report Act has numerous provisions that protect job seekers in the area of employment background checks. Section 604(a)(2) of the FCRA provides that "any consumer reporting agency may furnish a consumer report in accordance with the written instructions of the consumer to whom it relates." The translation being, a job seeker needs to give written instructions, or authorization, before a background check may be conducted. An employment background check that is conducted without written authorization is illegal under the FCRA.

In Unicru's kiosk space and at Unicru-driven Web sites, then, the question of electronic authorization comes into play. Is Unicru getting legitimate authorization for the instant background checks at its kiosks and online application sites?

In 1999, the FTC addressed questions about how to procure adequate consumer authorization for background checking via electronic means. In particular, FTC's "Lanever" staff opinion letter states that a consumer simply making one mouse click on

a screen does not constitute adequate electronic consumer consent.

That being said, the FCRA does allow electronic consumer consent in Section 604(b)(2)(B)(ii), which “provides that certain job applicants may authorize a consumer report for employment purposes electronically as well as orally or in writing.”

The FTC further clarified electronic consent to background checks in its Zalenski staff opinion letter regarding the E-SIGN Act Section 101 which gave legal force to electronic signatures. The letter outlined three important issues for job seekers:

1. Whether or not the electronic signature is valid will depend on the specific facts of each situation.
2. The electronic signature must clearly convey the consumer’s instructions.
3. The FTC stated that as specified by Section 101(e) of the E-SIGN Act, that consumer’s electronic authorization “must be in a form that can be retained and retrieved in perceivable form.”

#### ***5. Is Unicru compliant with the FCRA regarding electronic consent?***

Regarding the validity of Unicru’s electronic consent methodology, it is quite likely that a court proceeding would find that Unicru’s series of questions to job applicants would be construed as valid electronic consent because it involves more than one mouseclick. (Landeaver letter).

Regarding the clarity of the consumer’s instructions, the Unicru kiosks are designed to clearly convey the job seeker intent. This, too, would likely stand up to a legal challenge.

#### ***6. Is Unicru providing meaningful opportunity for jobseekers to revoke electronic consent?***

One of the Unicru screens states that jobseekers have the right to revoke electronic consent at any time during the application process. The screen then instructs job seekers to contact a store manager or person in charge at the location and sign a “paper Authorization” if they choose to revoke electronic authorization. If a paper application were actually available, Unicru/Sports Authority would be in compliance with the applicable provisions of the FCRA.

But when researchers physically entered the stores and applied for jobs, researchers asked Sports Authority managers for paper authorization forms during the application process. There was not a single instance in which that piece of paper or opportunity was provided to researchers.

Further, while applying at the Unicru-powered Web sites at SportsAuthority.com researchers stopped and called store managers to ask them about getting the authorization in paper form. Researchers were repeatedly told it was only available electronically.

## ***8. Conclusion regarding electronic authorization***

If Unicru, Sports Authority, and other companies seeking to conduct instant background checks with electronic authorization at kiosks want to truly comply with all of the provisions of the FCRA, as a practical matter, compliance will need to be “ground truthed” and tested at retail kiosk locations. If a manager is supposed to provide a paper authorization form, those forms should be available.

## **C. Kiosk Industry Recommendations**

Kiosks and the retailers that use them must prominently post OECD-compliant privacy policies. The privacy policy should cover the third party running the kiosk as well as the retailer handling the applicant data.

Employers must take responsibility for FCRA compliance.

If an applicant does not want to apply using an online system, a paper alternative should be readily available to them at each and every retail location with a Unicru-powered kiosk or any other kind of kiosk.

Employers should provide applicants with a way of printing out and retrieving the information they have supplied to the employer upon request, and they should be told that this is available to them and encouraged to avail themselves of this opportunity.

The HR-XML consortium needs to re-open its technical background check specifications and fully incorporate the internationally accepted OECD guidelines.

Kiosks are not an inherently negative technology. But without meaningful privacy policies, Kiosks at this time represent a negative development in the job search industry. With the number of kiosks growing rapidly, this is an area that needs to be examined before negative consumer privacy practices become ingrained.

Kiosks, their associated Web sites at retailers, and the retailers themselves need to commit themselves to fully implementing the full Fair Information Principles as outlined by the Internationally agreed upon OECD 1980 guidelines. And if retailers and others are going to use kiosks and associated Web sites that make certain claims about FCRA compliance, they must follow those claims up meaningfully and “groundtruth” compliance.

## **E. Consumer Tips for Using Employment Kiosks and their Related Web sites**

Do not submit your SSN or date of birth to a kiosk or a Web site that does not have a privacy policy posted prominently prior to the time this information is requested of you. If you do, you truly lose control of this information.

If you have any arrests or suspended convictions in your background, you may want to think twice about agreeing to an “instant” or “national” background check online. Some (but not all) of these national credit checks that are conducted through accessing proprietary databases online pick up and report information that should not be reported, such as suspended convictions.

As such, the employer may get information they should not under the FCRA. This is a complex area of the law. ESR maintains a helpful set of articles about pre-employment background screenings.<sup>i</sup>

If you have been denied employment based on the results of an instant background check, you should be notified in writing of this adverse decision.

If an instant background check has been conducted and has found a criminal conviction, the company conducting this check is to report to you that they did the check and reported the findings.

When you use a kiosk to apply for employment, bring a pencil or pen with you so you can write down all contact information that you are given at the kiosk regarding a background check or your application.

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<sup>i</sup> See: < <http://www.esrcheck.com/articles/index.php>>.