

Why you have the right to obscurity

Federal Trade Commissioner Julie Brill says that obscurity means that personal information isn't readily available to just anyone. In our age of aggressive data collection, she says safeguarding obscurity should be a key component of consumer protections.

By Evan Selinger, Columnist and Woodrow Hartzog, Contributor

April 15, 2015

individual's right to have some control over their online persona and destiny. Individuals want to be able to share with their friends and business associates on social media, shop online, and use connected devices, but they don't necessarily want all of these activities monitored, tracked, collected, and used by entities they do not know or with whom they have no relationship.

And this is where obscurity fits in. Obscurity means that personal information isn't readily available to just anyone. It doesn't mean that information is wiped out or even locked up; rather, it means that some combination of factors makes certain types of information relatively hard to find.

Obscurity has always been an important component of privacy. It is a helpful concept because it encapsulates how a broad range of social, economic, and technological changes affects norms and consumer expectations. In Brandeis' time, the technological change he was concerned about was the introduction of instant photography. Several scholars, [including both of you](#), have discussed how many of our concerns about obscurity today center around digitized information and search tools that make it quick and cheap to do what was once expensive and slow – often prohibitively so.

But obscurity – or concern about the lack of obscurity – stems from more than just technological developments. Business models and economic forces can lead to information becoming less obscure. Brandeis was as concerned about the practices of intrusive journalists and newspapers as he was about the advent of instant photography. Several decades later, the introduction of widespread credit reporting raised concerns about the lack of obscurity.

After World War II, an increasingly interconnected national economy drove demand for widespread availability of information about individual consumers' character and creditworthiness – information that was once only available through personal references or a trip to a local courthouse.

Selinger and Hartzog: What obscurity protections do you believe consumers are entitled to?

Brill: Let's start with the obscurity protections provided under current law. Perhaps the clearest example under federal law is found in the [Fair Credit Reporting Act \(FCRA\)](#), which was enacted in 1970 to address increasing concerns in the 1950s and 1960s over the amount and type of sensitive information held by credit reporting agencies. The FCRA limits the amount of time that credit bureaus can report negative information about consumers in their credit reports. For example, the FCRA says that credit bureaus can't report information about unpaid debts, civil judgments, and a wide range of other "adverse" information if it is more than seven years old. In addition, bankruptcies have to vanish from credit reports after 10 years. Thus certain information is obsolete and irrelevant for credit reporting purposes and, by being taken out of credit reports, becomes much more obscure. The FCRA's obsolescence provisions reflect the judgment of Congress that negative information should not follow consumers around forever, and that consumers deserve a fresh start on their credit reports after a certain amount of time.

There are a couple of additional important aspects of the FCRA's obsolescence provisions. First, they are designed to operate without requiring consumers to take any action at all. When information gets too old, that's it – credit bureaus can't report it any longer. Second, these

and remedial, the Commission has been able to require companies to allow consumers to delete or suppress information about themselves in some circumstances.

For example, in [our settlement with Facebook](#)