

21st Century Cyber News: Private vs. Public Information

LIS461: Data and Algorithms: Ethics and Policy

Shia Aaron Lloyd Fisher

University of Wisconsin, Madison

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Paul J. Kelly, Tallal Ahmad, Yinka Ajiobola

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Introduction

It is challenging to say what the Founding Fathers would have actually wished in the writing of the Constitution with respect to the sharing of personal information about an individual on the Internet, since the concept of the Internet alone is quite unthinkable from that period in time. While there is no federal law addressing this action to date, several jurisdictions have enacted laws to discourage criminal dox[x]ing¹. Doxing, (sometimes spelled with two x's) is the sharing of personal information about an individual with the intent to intimidate, threaten, harass, or otherwise cause physical bodily harm². In addition to agreeing on the spelling of this 21st

1 Anti-Defamation League | New Legislation Introduced to Crack Down On Doxing In Illinois | Midwest. (n.d.). Retrieved August 10, 2023, from <https://chicago.adl.org/news/new-legislation-introduced-to-crack-down-on-doxing-in-illinois/>

2 Shankman, H. (2023). How to Close Pandora's Dox: A Case for the Federal Regulation of Doxing. *University of Florida Journal of Law & Public Policy*, 33(2), 273–307.

Century terminology, the United States has yet to codify this action into law as a potential crime. US Representative Katherine M. Clark of Massachusetts sponsored a bill in 2016 titled “Interstate Doxxing Prevention Act,” a bill that would subject violators of the offence to both civil and criminal liability carrying a potential prison term of up to five years and or a monetary fine³.

A cornerstone of the United States, as a *common law* country, promotes the Constitution as a basis for all legal theory within the jurisdiction of the nation⁴. In the wake of Black Lives Matter demonstrations in the summer of 2020, the popular rally to “defund the police” caused states like Arizona, Colorado, Florida, Kentucky, Minnesota, Oklahoma, and Oregon, to create laws to prevent the unwanted disclosure of a police officer’s home address and contact information⁵. Other states have launched this debate as well⁶. The California legislature interprets doxxing as a

3 H.R.6478 - 114th Congress (2015-2016): Interstate Doxxing Prevention Act. (2016, December 22). <https://www.congress.gov/bill/114th-congress/house-bill/6478>

4 U.S. Department of Justice. (2023, June 7). Roles in Civil Legal Systems. National Security Division Office of Justice for Victims of Overseas Terrorism | Roles in Civil Legal Systems | United States Department of Justice. <https://www.justice.gov/nsd-ovt/roles-civil-legal-systems>

5 LoMonte, Frank and Fiku, Paola, Thinking Outside the Dox: The First Amendment and the Right to Disclose Personal Information (September 1, 2022). 91 UMKC L. Rev. 1 (2022), Available at SSRN: <https://ssrn.com/abstract=4209334>

6 Id

punishable form of stalking and/or harassment⁷. Opponents of “anti-doxxing” laws believe it goes against freedom of speech⁸.

The use of computerized algorithms should not be criticized or take on negative inferences in the United States if the implementations are completely lawful. However, programmers may take blame only if they continue to subvert the law in cases where the subject has been made aware of recent changes to laws or governing rules. The problem for anti-doxxing law supporters is the first amendment of the United States Constitution covers all forms of speech to include written (published or unpublished), spoken words, and protests⁹. This paper discusses a specific instance of doxxing and unpacks the moral questions to discover if the action can be morally permissible if concluded lawful.

I. KEY CONCEPTS

The act of broadcasting otherwise undisclosed personal information about an individual via a mass communication network with a malicious intent is a more abstract definition of dox[x]ing. Another important concept for this case study is the Automatic Dependent Surveillance-Broadcast (“ADS-B”), which is a system, according to the Federal Aviation Administration

⁷ Electronic Cyber Harassment Law in California, California Penal Code § 653.2 PC

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PC§ionNum=653.2

⁸ Angwin, J. (2021, August 21). The double-edged sword of anti-doxing laws. Hello World. <https://themarkup.org/newsletter/hello-world/the-double-edged-sword-of-anti-doxing-laws>

⁹ What does free speech mean?. United States Courts. (n.d.). <https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does>

(“FAA”) that is “transforming aviation,” by aggregating real-time flight informationⁱ (e.g., velocity, altitude, longitude, and latitude) air traffic controllers can perform their duties more efficiently. These transmissions are not only the preferred method of surveillance¹⁰ for air controllers when they were first introduced in 2010, but since January 1, 2020, “ADS-B Out” is now a federal mandate for aviation¹¹. The ADS-B transmissions are publicly accessible, and aviation hobbyists, commercial companies, and the public writ large utilize the protocol and can use data to effectively track an aircraft’s position in a log¹².

II. FACTS OF MATTER

In 2022, famed multi-billionaire Elon Musk sent then 19-year-old Jack Sweeney a direct message on the application best-known-as Twitter¹³. Sweeney was a sophomore at the University of Florida (“UF”) and the account holder of the handle @ElonJet when he was contacted. Sweeney used the social networking site (“SNS”) account to share flight tracking data of Mr. Musk’s private jet¹⁴. In the conversation between the two, Mr. Musk voices his concern over his personal safety establishing that dangerous people, “nutcases,” could use the flight tracking data

10 FAA clears ITT-deployed ADS-B system cleared for nationwide rollout. (2010). *Military & Aerospace Electronics*, 21(12), 16–17.

11 Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment and use, 14 Code of Federal Regulations § 91.225, CFR.
<https://www.ecfr.gov/current/title-14/chapter-I/subchapter-F/part-91/subpart-C/section-91.225>

12 Fala, N., Falas, C., & Falas, A. (2022). A method for automatic airport operation counts using crowd-sourced ADS-B data. *Aviation*, 26(4), Article 4. <https://doi.org/10.3846/aviation.2022.18025>

13 Verma, P., & Lerman, R. (2022, December 18). Is plane tracking doxing? how public data enraged Elon Musk. *The Washington Post*.
<https://www.washingtonpost.com/technology/2022/12/17/elon-musk-jet-tracker-doxxing/>

14 Wile, R. (2022, December 16). How is it legal to track private planes like Elon Musk’s? *NBCNews.com*.
<https://www.nbcnews.com/business/business-news/elon-musk-jet-tracking-is-it-legal-elonjet-rcna61996>

to learn his whereabouts in a plot to cause him bodily harm¹⁵. Musk offers Sweeney \$5,000 to which Sweeney counteroffers for \$50,000; in the end, Musk states “it doesn’t feel right to pay” to have Sweeney remove the account¹⁶.

Sweeney’s counteroffer allegedly was to have enough money to pay for college and buy a Tesla¹⁷. His reasoning was that the account displayed a certain level of computer algorithmic knowledge which he had fun making¹⁸. Another inference for this undergraduate could be that the SNS account is helpful for the budding programmer in their pursuit to distinguish themselves from their academic peers who might be competing for the same types of job opportunities in the future. The in-state tuition for UF was \$6,380 in the 2022-2023 academic year, and the average cost of room and board was \$10,950 annually, hence Sweeney’s rationale and counteroffer are in close proximity¹⁹.

At the timing of events, Sweeney did not face scrutiny of law enforcement and did not break any governing rules of the SNS. Sites like ASDBExchange.com gave way for the college student to singlehandedly develop the algorithm that controls the SNS account²⁰. The FAA’s mandate of

15 Id Washington Post.

16 Hamilton, I. A. (2022, January 30). Teen who turned down \$5,000 from Elon Musk to shut down a Twitter account tracking the billionaire’s jet says he gets too much work satisfaction to settle for less than \$50,000. Tech. <https://www.businessinsider.com/elon-musk-private-jet-tracking-twitter-account-2022-1>

17 Id.

18 Id.

19 U.S. News & World Report L.P. (n.d.). University of Florida Tuition, Cost & Financial Aid. U.S. News. <https://www.usnews.com/best-colleges/university-of-florida-1535/paying>

20 Id. NBC News.

ADS-B systems makes publicly available the flight data used to track Elon Musk's private jet and indeed any flight records. Sweeney simply used his knowledge of computer algorithms to seamlessly display this information in an easily digestible fashion, a short social media post.

In the same year (2022) Elon Musk acquired the SNS and became the owner and operator by October²¹. In December of 2022, Sweeney's flight tracking account was deemed in violation of the SNS platform's changing rules²². Sweeney's account was temporarily banned in December of 2022 shortly after Elon's installation as CEO as the new rules of the SNS indicated that "real-time sharing of location information," is an offense worthy of a ban. Sweeney's new account shares information after a 24hr period has elapsed and does not seem to violate the new rules of the SNS, it would go on to be reinstated²³.

Mr. Musk is criticized as in the past he intoned that he had a "commitment to free speech," this seemed to imply under his leadership the SNS would allow user accounts without restrictions but, the latest policy implementations of the SNS seem to carry restrictions²⁴. It is rumored that Musk was surprised when he became aware of just how much information was shared publicly by the ADS-B system. Since Musk's acquisition of the SNS, competitor company, Meta (corporate parent of Facebook Inc. and Instagram Inc.), has launched a new SNS

21 Conger, K., & Hirsch, L. (2022, October 28). Elon Musk completes \$44 billion deal to own Twitter. The New York Times. <https://www.nytimes.com/2022/10/27/technology/elon-musk-twitter-deal-complete.html>

22 Weatherbed, J. (2023, July 10). The Elon Musk private jet tracker resurfaces on threads and immediately goads Mark Zuckerberg. The Verge. <https://www.theverge.com/2023/7/10/23789481/elon-musk-private-jet-tracker-threads-twitter-bot-elonjet>

23 Id.

24 Id.

that is a remarkably similar platform called Threads²⁵. Sweeney has created an account on Threads to continue tracking flights of various notables to include Kim Kardashian, Bill Gates, Jeff Bezos, Donald Trump and even Meta owner Mark Zuckerberg²⁶.

III. MORAL THEORY

Guiding the analysis of this particular case of doxxing from a moral standpoint, let us first assume Jack Sweeney is operating within the confines of the law, and let us also take for granted that the flight tracking accounts do not violate the changing policies of the SNS in use. Ethical subjectivity means an individual decides the morality of a particular set of facts, which is counter to the cultural relativism that puts the judgement in the hands of society²⁷. The Kantian Deontological Principle of Humanity calls into question the ethical subjectivity of Elon Musk for his previous statements concerning the right to free speech. Irrespective of the outcome, if Musk honestly believed he was respecting the sanctity of the first amendment, then he would certainly agree there is no inherent wrong in utilizing the ADS-B on the SNS. Furthermore, recognizing that he has no more, nor less personal protection from publicly accessible systems such as ADS-B is to make himself equal to everyone else. Hence, he should not move to ban an individual account for utilizing these systems on the platform.

25 Holt, K. (2023, July 7). Meta restores Instagram and threads account that tracked Elon Musk's private jet. Engadget.

<https://www.engadget.com/elonjet-is-now-posting-elon-musks-assassination-coordinates-on-twitter-rival-threads-164026053.html>

26 Weatherbed, J. (2023, July 10). The Elon Musk private jet tracker resurfaces on threads and immediately goads Mark Zuckerberg. The Verge.

<https://www.theverge.com/2023/7/10/23789481/elon-musk-private-jet-tracker-threads-twitter-bot-elonjet>

27 Shafer-Landau, Russ. (2015). The fundamentals of ethics. New York :Oxford University Press,

Likewise, it is critical to examine the moral intention of Sweeney. Is he truly continuing his crusade of sharing flight data of notable individuals for altruistic purposes, or is he instead targeting high finance individuals for the prospect of fame or fortune? If the latter is true, then from a deontological lens, ethicists might agree that Sweeney is treating these individuals (including Musk) as a mere means for gaining on his true intentions. Sweeney is committing a wrong regardless of outcomes because his goals are impure. If, however, these social media posts are nothing more than spreading public information that was legally obtained, then it is difficult to condemn Jack Sweeney's actions from this ethical view.

Looking toward utilitarianism there is some credence to the argument made by Musk concerning his safety in the short run. After all, he is a very public figure who may or may not have strong opponents both willing and capable to do harm. It is a common refrain that broadcasting this information helps expose the ecological footprint left from frequent private flights, so this action could also be interpreted as protesting. Considering the consequences, one should ask if it is fair to put Musk (and people in his orbit) in a harmful way as to "protest" some ideological view. The rebuttal from this consequentialist lens can weigh widespread harm on the environment caused by one (or several) high finance individual(s)' lifestyle and how this effect plays out in the short and long run.

IV. POLICY PROPOSAL

Do nothing. The laws are in place, the Constitution gives support for regular people to voice their opinion in whatever lawful manner they see fit. Elon Musk may choose to hire better security, consider alternative travel arrangements, create new policy on his SNS and encourage

other platform developers to do the same. Musk may also try to find some amenable terms with Sweeney to remove the accounts, however, that will not stop copy-cat accounts from doing what Sweeney did.

For the sake of clarity and legal proceeding, the US government should codify “dox[x]ing,” under the Federal Code and pass the “Interstate Doxxing Prevention Act.” It should agree on a spelling and definition, and it should clearly state what can be criminal doxxing and what can be an element of a protest. It is suggested that the United States government modernize its laws to more specifically outline and articulate cyber related activities. Cybercrimes in many circumstances are charged under other statutes relating to the specific offence. For instance, it is not lawful to stalk someone in real life, hence cyberstalking may be punishable under the same guidance as stalking.

One objection is that the more bills that are codified into law the harder it will be for courts to use discretion when deciding the outcome of civil disputes. Similarly, it may also deliver a particular interest a roadmap advantage in the legal system if they can successfully parse the language of the new laws and game the system. This would be a major step in the wrong direction for society. The counterpoint to doing nothing at all however suggests that Americans will not experience a sense of unity on this issue likewise cyberpsychology or Internet related harms. The Internet covers all corners of the nation, so to have differing laws in different jurisdictions for the same actions might mean that an programmer can plant a piece of code from one state legally and potentially violate another state’s law. This confusion overtime is also unhealthy for a productive and equitable society.

V. CONCLUSION

There is no shortage of controversy or debate when it comes to issues of privilege. Mixing factors such as socio-economic class, data and algorithms, ethics, and policy, and it is simply a tangled web to unweave. To promote the ideals of a democracy and defend the Constitution would be to gather all the facts and weigh them before condemning all acts that reveal personal information as illegal doxxing. If it is true that an algorithm can put people in the way of serious bodily or emotional harm (regardless of the intention), then for the sake of humanity the program should not be allowed to exist. A country's judicial system itself could be considered a heuristic for evaluating various instances of harm. So, should an algorithm that can put people in the way of serious mental harm be morally permissible?

Failing to prove the worry exists means there is no implication. The written work of a speaker (in this case the computer program) is found to be legally permissible in this sense since it is protected under freedom of speech. In recent history, brazen attacks, successful assassination attempts have been carried out against high-profile individuals! From former Japanese Prime Minister Shinzo Abe to political hopefuls in upcoming elections^{28, 29}. It is in no way a delusion of grandeur on the part of Mr. Musk to worry about his safety. Does the act of Jack Sweeney's SNS account cause cyber-psychological harm to Mr. Musk?

28 Murphy, Y. T. & M. (2022, July 8). Shinzo Abe: Japan ex-leader assassinated while giving speech. BBC News.
<https://www.bbc.com/news/world-asia-62089486>

29 Valencia, A. (2023, August 11). Fernando Villavicencio assassination: Suspects are Colombian, police say. Reuters.
<https://www.reuters.com/world/americas/assassination-presidential-candidate-shocks-ecuador-election-2023-08-10/>

From the lens of act-consequentialism, we may find a lane to change public opinion on anti-doxxing laws. Act-consequentialism is the fundamental concept that asks people to act in accordance with what is the greatest good. Simply absence of evidence is not a reasonable defense to Mr. Musk's argument. That is, for Mr. Musk's argument to work, he should not have to wait to be accosted (or worse) by an unhinged individual who tracked him simply by using a SNS. Society should ask where the line is between freedom of speech (protesting) and illegal doxxing (intention to commit harm). Act-consequentialism ignores Sweeney's intention, ignores what is permitted by governing rule, and strictly considers results. What is the net result gained by the use of the SNS versus what the net gain is in the account suspension from doxxing. These are the key factors to consider.

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i Fala, N., Falas, C., & Falas, A. (2022) (p. 211)

ii Hamilton, I. A. (2022, January 30). Sweeney's real reason for tracking Elon Musk's jet is simply because he thought it was cool, and he valued his time in making the SNS account.