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Will "Smarter" Marketing End Social Discrimination? A Critical Review

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INTRODUCTION

International Business Machine's commercial, "*Smarter marketing: Seeing customers as individuals*," which aired in August 2012 depicts a group of female joggers conspicuous in their matching outfits running past a set of men wearing identical suits. The narrator explains that "Companies use to view us as demographics because they couldn't see what made people different." The suited men in the commercial expose this marketing shortcoming by removing their suit jackets to reveal a diversity of clothing styles, hence individualities. The narrator states, "Today retailers from the US to Japan are using analytics to find insight in social chatter, reviews, and sales transactions, helping some companies increase online revenue up to 50% by offering customers an experience as unique as they are. That's what I'm working on; I'm an IBMer. Let's build a smarter planet." This IBM commercial dramatizes two claims—one general and the other specific-- made by the web marketing/advertising industry. 1) By monitoring consumer web activity and collecting, managing, and mining data, companies serve consumer's best interests and 2) by adopting sophisticated analytics web marketers avoid discriminations that disserve individuals. Critics hotly contest the first claim by pointing out privacy violations, consumer manipulation, and lack of autonomy for users who do not know nor control the data collected from cookies and clicks. The second claim has appeared more recently and has faced less scrutiny.

The second claim resonates with the modern ethos of liberalism, individualism, and science. It expresses a progressive interest in ending social discrimination. It professes the centrality of the individual, what IBM refers to as the "chief executive customer." Finally, it entails a common narrative in Western culture of the success of rationality, technology, and science in solving social problems. Although we share an interest in ending social discrimination, we are more circumspect about pronounced individualism and technological fixes. Despite its appeal, or perhaps because of it, we should not accept the claim at face value. In this paper we present our critical investigation. We argue that social discrimination may not disappear under smarter marketing; more overt forms may wane only to be replaced by more subtle forms.

THE COMMON CRITIQUE

Before discussing social discrimination, let us go over the common critique of the e-marketing industry. Personal data has become a valuable commodity to buy and sell. According to Forrester Research, U.S. companies spend up to \$2 billion a year to collect information. Google, Twitter, Yahoo, and Facebook receive most of their revenue from the e-marketing industry and compete to create sites and applications conducive to data collection and advertising. Facebook announced in June 2013 that it had reached 1 million advertisers. Web generated data can be collected from registration forms, online transactions, and other clickstream records. Clickstream data gives marketers the ability to analyze paths, shopping carts, search by key terms and entry and exit points. Unfortunately, firms are capturing more than customer related behavior, and this is of great concern to privacy advocates. Advertisers now have credit histories, shopping habits and personal habits such as web browsing, health, lifestyle, sexual orientation, politics and other personal preferences that go beyond what we buy. A McKinsey report from October, 2011 describes companies seizing the potential of big data as industries ranging from "pharmaceuticals to retailing to telecommunications to insurance" are using large scale data-gathering and analytics to shape strategy to differentiate themselves (McKinsey, 2011). Consumers are held hostage by opt out strategies that they often do not see or understand. Techniques such as disabling cookies only go so far, and that action often leaves users without transaction services that they need and want. Services such as Google search keep track of consumer searches without notifying the user. Often web sites ask us to agree to their terms in order to use a site or product. Often, the consumer is agreeing to have personal data sold or repurposed. The further the data goes, the less consumers have control of who has access to it. Often these databases are vulnerable to hacks and government access without notification to the consumer. Privacy and consumer autonomy are violated in the name of the consumer's best interests. This smacks of a paternalism that advertisers know what is best for us, the consumers.

ANTI-DISCRIMINATION: ENDS AND MEANS

Given the concern regarding a person's privacy and self-determination pronounced in the common critique, it is clear that the individual is treated as the subject or unit of analysis. This orientation, however, is incomplete. Human persons are social beings and their membership in social groups has a profound impact on life chances. For example, a child born into the crushing poverty of a destitute nation will have few prospects as compared to a child of an upper class family in an affluent nation. The importance of consumers' social status is not lost on marketers and advertisers and a standard methodology entails segment classification according to class, gender, ethnicity, etc. We are interested in these higher-order analytics and the subsequent decisions that are made. Social discrimination is defined as "the process by which a member, or members, of a socially defined group is, or are, treated differently (especially unfairly) because of his/her/their membership of that group" (Jary and Jary, 1995: 169). We address two questions with regard to e-marketing/advertising: 1) What forms of social discrimination occur now? 2) Should we expect smarter marketing to end social discrimination in the future?

Let us be clear: We wholeheartedly accept the underlying premise that social discrimination is detrimental. Although this is couched in terms of customer relations, we understand this in terms of fairness and justice. For example, at the personal level, it is unfair that a qualified consumer be denied services and goods due to a classification that has little or no relevance to his/her life. At the social level, systematic differential treatment of social groups creates deeper inequalities. Some groups unjustifiably benefit, for instance, with easy access to insurance and credit, while others are deprived of such. Moreover, we believe social discrimination to be dysfunctional to the extent that it blunts human endeavor, divides societies, and undermines core democratic principles. We see in the IBM promotion an interesting variation to John Rawls' "veil of ignorance"—that a just system (or, for IBM, better consumer relations) is more likely to develop if decisions are made without regard to social background, ethnicity, and sex (1971/1999). In summary, we share a commitment toward the "end" that social discrimination be reduced. That commitment also provides our motivation to evaluate the "means" of smarter marketing in order to evaluate if that is really happening.

ORDINARY FORMS OF SOCIAL DISCRIMINATION: WEBLINING AND E-SCORING

Before we proceed we need to elaborate the concept of social discrimination by introducing from the social sciences certain distinctions. The first distinction pertains to the three social tiers: interpersonal, institutional, and structural (or systemic). Discrimination may occur in everyday interactions at the person-to-person level where a teacher singles out a student for punishment, a shop owner refuses a customer, or a landlord charges an unfair rent. If these are rare and localized acts that is one thing, but if they are endemic to education, business, and real estate we have a much more serious problem of institutional discrimination. We will discuss discrimination at this level with regard to the e-marketing practices of weblining and e-scoring, but first a word on structural discrimination.

The digital divide, i.e., the division between those with and those without computers, smart devices, and internet access, is often described in terms of structural discrimination. Those already disadvantaged- the poor, isolated, and to a certain extent those with disabilities- are restricted from opportunities that web users take for granted such as browsing, online job applications, medical information, and educational resources, as well as, e-commerce promotional offers, discounts, comparison pricing and product reviews. Given that the e-marketing/advertising industry relies on data from users and its business strategy is to find ways to profit from such users, we see little incentive and no concerted effort by the industry to pay attention to non-users and, accordingly, we should not expect smarter marketing to make a dent in the digital divide. Some may argue that this is asking too much of private industry and that governments or international organizations are responsible for bridging the divide. While not conceding this point, we would like to move the discussion to institutional discrimination where we should find consensus that actors in the industry are held accountable for their business practices vis-à-vis users.

The second distinction that we utilize is between overt and covert forms of discrimination. Overt discrimination is blatant and often meant as a public statement, for example, posting a sign at a business that members of a racial group need not apply for employment or will not be served food. Covert discrimination is subtle and often difficult to detect, for example, job referrals by word-of-mouth. Robert Merton makes a distinction between prejudice and discrimination. Merton conceptualized prejudice as feelings or attitudes and discrimination as behavior or treatment (Healey and O'Brien, 2007). Ordinarily personal bias goes hand-in-hand with abusive acts, but there are cases where the bigot may not act on his feelings due to fear of retribution, timidity, or other reasons. More importantly for our discussion, discriminatory acts may be motivated not by emotion but by instrumental reason. Statistical discrimination is a primary example of discrimination without prejudice and of a covert type.

Statistical discrimination is made possible by modern data collection methods and statistical analysis. Analysts derive population means and other statistics from information gathered from members of various groups of interest on such variables as household income, default rate on loans, and monthly food budget. These averages are then used to determine if members of a social group will be offered a good or service and at what price. Statisticians know that an ecological fallacy is committed when inferences about individuals are deduced from group-level statistics. Nevertheless, managers of for profit enterprises must consider the probabilities of making or losing money and statistical discrimination in certain instances may make financial sense. Note that this entails a cost-benefit analysis devoid of prejudice and, if practiced discretely and with complexity, is very difficult to detect. This has not always been the case. The term redlining was first used in the 1970's to describe the failure of banks, insurers and other service providers to offer services to residents of the inner city where a red line was literally drawn on a map to indicate locations where the company would not do business. Statistical discrimination, often based on census data, resulted in such racially discriminatory practices as not offering home loans to African-Americans regardless of household income level. Redlining is prohibited today, but a more far-reaching practice has emerged in the digital age. With "weblining" the map used is not a geographical map, but a data map with points derived from how we navigate the internet, where we go, how much time we spend, what we consume, and our purchasing practices. Analytic software gives marketing firms the ability to sort data collected from customers into patterns to segment a customer base. Certain predictions are made about the behavior of certain demographics.

Marcia Stepanek of Business week coined the term "weblining" in 2000 when she described how banks ranked their customers and assigned different fees and services based on the rank. We now use this term in a broader sense than just price discrimination. Weblining refers to the exclusion of classes of consumers from the marketplace based on characteristics of groups not individuals. If you are deemed affiliated with an undesirable demographic, you might not get a loan, receive credit, or be insured based on a group level prediction. People are not treated as individuals to be examined case by case, but rather are prejudged according to assigned social affiliations. When looking for a product online, a store can see the consumer's entry point, keywords used in the search, the clickstream within the site, and the contents of the shopping cart. The store will then compare this data to existing customers and put the consumer into a group profile. This profile may or may not be accurate. This is the crux of the ethical issue with behavioral advertising – there are consequences that flow from assigning a consumer to a profile group that may have deleterious effects on his/her purchasing power. Online marketing companies then use targeted advertising that capture streams of data from social media, web habits and credit cards to personalize ads to customers in real time. The amount of money the advertiser is willing to spend on the customer depends on their use of social media, recent purchases and web sites frequented by the customer. If the customer's value is lower than marketing costs, they will not get the ad. Facebook works with advertisers to segment users based on Facebook data and helps clients determine whether a consumer may be a heavy or light user of a product (Vega, 2013).

For example, a targeted advertising approach based on what a consumer has actually purchased is done by the "global leader in customer engagement", the Affinion group. They have over 5300 clients including 18 of the top 20 financial institutions in the U.S. that purchase credit card information from Affinion. This enables personalized advertising. Their website states, "whatever business you're in – banking, e-commerce, retail, direct-to-consumer –

we're in the business of increasing your revenue." They do this by "realizing incremental fee income and monetizing traffic from current customers through cross sell or up-sell marketing." Their product, NetGain!, uses a customer segmentation approach that analyzes needs, attitudes, and behaviors of customers. A description of NetGain! on the website states: "NetGain's strategy leverages real insight by taking into account a variety of demographic and psychographic data to determine at the household level who has the highest propensity to respond to specific products at the category level (e.g. deposits, lending)." The Affinion direct response group (ADRG) advertises services such as database modeling and analysis and describes their product as "precision tuned, data-driven methodologies to analyze and predict customer buying patterns and behaviors that deliver the necessary metrics to attract and retain customers. Our 30 modeling analysts, PHD statisticians and programmers focus on building highly predictive response models that support thousands of marketing campaigns annually" (www.affinion.com/solutions).

Retailers and service providers increasingly rely on e-scores to identify "targets" and "wastes" (desirable and undesirable consumers). On the Internet, Google ranks our search results, Facebook scores us based on our habits, Klout scores us based on activity on Twitter and e-scores rank our value as customers (Singer, 2012). Shopping is no longer an egalitarian activity where consumers are charged the same price for the same item purchased. This lack of transparency results in an unfair price advantage for some but not all buyers (Clifford, 2012). The e-score is becoming an increasingly powerful way of determining the value of a customer and whether companies want him/her as a consumer of their product. Companies such as banks, credit card and debit card providers, insurers and online educational institutions are using this data to decide what (if any) product is pitched to a particular consumer (Singer, 2012). From an ethical standpoint we are concerned about the creation of a subprime class that companies or financial organizations can choose to ignore when they offer credit cards, insurance or loans. The consumer program director of the U.S. public Interest research Group stated, "There's a nontransparent, opaque scoring system that collects information about you to generate a score – and what your score is results in the offers you get on the Internet. In most cases, you don't know who is collecting the information; you don't know what predictions they have made about you, or the potential for being denied choice or paying too much" (Singer, 2012).

The e-score in essence creates a two tiered system that gives preference to profitable users for important buying powers and protections and denies others. This is clearly in opposition to the intent of the Fair Credit Reporting Act in the United States which requires that consumer reporting agencies show users their credit reports and allow corrections to incorrect data on the report. This law also mandates that consumers know if any adverse action is taken against them based on the reports. Of course, none of this is being done with e-scoring. The proliferation of consumer ranking and digital marketing practices raises concerns about basic principles of justice and fairness in society. The Internet which was touted as the great equalizer now has the potential to foster discriminatory practices. When the Internet is used to weblines, it is creating inequalities and barriers to access. If insurance companies exclude segments of the marketplace and limit their sales efforts to the financially well off, for example, then a disparate impact can negatively affect parts of the nation that have trouble getting insurance (Chin-Hui-Lai and Kleiner, 1999:5). In addition, this information can be sold to various organizations and go from firm to firm. It can easily lead to social prejudice or worse forms of out-casting and stereotyping. It may also construct a barrier to upward mobility.

There are no specific laws that protect us from the social aggregation practices that assign us to arbitrary groups based on our internet choices. The few cases of weblining brought before U.S. courts had strong affinities with redlining. The Association of Community Organizations for Reform Now (ACORN) claimed that Wells Fargo steered individuals away from certain housing districts based on racial classifications and stereotypes about racial "life-styles." In another suit it was alleged that Kozmo.com denied delivery service to residents in "predominantly black neighborhoods in Washington, D.C., based not on individual information but on geographical location" (<http://ecommerce.hostip.info/pages/1078/Weblining-Internet-Redlining.html>). Most weblining practices do not

prioritize geographical location; therefore, they are unlikely to be challenged according to the key anti-redlining policies of the Fair Housing Act of 1968 and the Community Reinvestment Act of 1977.

THE CASE FOR SMARTER MARKETING

Companies such as IBM respond to the common critique by arguing that, far from taking advantage of consumers, smarter marketing provides a better consumer experience through customization of promotions. This “hyperpersonalization” allegedly provides the additional benefit of reducing social discrimination by steering clear of broad population segmentations of class, gender, and race. We will discuss two ways that this might be done. First, “predictive analytics” offers much finer granularity, incorporating information as specific as personal preferences. Second, the friend networks that people are encouraged to develop on social media sites are tapped for marketing and advertising purposes. Facebook is the industry leader and they use the term “social graph” for this approach. As the thinking goes, because tastes and social networks are nuanced and idiosyncratic, the marketing and advertising strategies derived from sophisticated analysis of these data sources should avoid gross discriminations.

It should be noted that less sophisticated e-marketing/advertising strategies present little or no risks of social discrimination. For example, advertisers purchase space on websites to display ads and banners expecting that some viewers will notice the advertisement and click on the displays. Some of these ads are tailored similar to television commercials according to what is gleaned about a particular audience, for example, whether teenagers visit a site; nevertheless, this entails a crude correspondence between consumer interest and product placement and between person and social group. Web surfers are very good at ignoring such ads and the hit ratio and product purchase rates tend to be very low. Quite telling, in 2010 Facebook stopped running generic ad banners.

Retargeting, also known as remarketing and remessaging, is a smarter marketing technique based on a user’s previous browsing history. Cookies were an early example of retargeting. These techniques focus on user searches and attempt to personalize their ads based on this information. For example “Bing currently offers Search Remessaging to advertisers but it is not yet available through their AdCenter platform. When a keyword search is done using Bing, the searcher is then tagged and shown retargeting ads on the Microsoft Media Network and on their partner sites” (Ellis, 2012). There are newer techniques that lend themselves to the Social Media platforms. Among them are: Instant retargeting, Social Retargeting and Intent retargeting (Ellis, 2012). These forms of retargeting aim at giving the user almost instantaneous ads as soon as a query is posted. Intent retargeting goes even further where marketers can respond to users in real time. Adchemy, LocalResponse and Yieldbot are three companies that use this technique (Ellis, 2012). Our interest in these newer forms of retargeting is the potential role they may play in discrimination.

Among the [50 Ecommerce Remarketing Strategies](#) Posted by [CPC Andrew](#) on May 10, 2012 in his [cpcstrategy](#) blog, five have the potential for social discrimination. They advise the advertiser to target ads to specific demographics, segment audiences, test ads to see which ones drive more conversions to a targeted group, and create negative audiences who are restricted from seeing certain ads (Andrew, 2012).

Purveyors of smarter marketing promise advertisers even higher yields than retargeting. Higher yields allegedly make smarter marketing more cost effective; furthermore, a high yield rate is more crucial than ever in the age of smart devices. Increasing numbers users are accessing the web through smart phones and tablets. The relatively smaller screens limit the size, number, and type of ads that can be placed; subsequently, smart device advertising has to be more precise. Predictive analytics and the social graph are presented as solutions to this problem. They promise a level of intimacy with customers unmatched by other strategies. However, as we will describe in the next two sections, it also presents a greater risk of subtle forms of social discrimination.

PREDICTIVE ANALYTICS AND DISCRIMINATION

The first step in gauging a consumer's interests is to monitor her searches and purchases. This history is then compared to patterns and trends in a population of consumers. Amazon or Barnes & Noble, for example, make recommendations or promote detective novels based on a match between the titles that an individual has purchased and other titles trending in their customer base. Predictive power increases the more that is known about the customer, the larger the population size and variable set, and the more sophisticated the statistical analyses. (Using similar methods, pollsters have become quite good at predicting election results.)

Although not pronounced in promotional materials, it is important to note that predictive analytics works through cross referencing between person and group. Previously, we described how weblining also entails treatment of users based on identification with groups. We discussed the threat of statistical discrimination. Proponents of predictive analytics claim that their refined identifications based on consumer preferences reduce the risk of social discrimination. We, however, suggest two reasons why risks will remain. The first has to do with market inertia and performance and the second with the correspondence between social status and tastes. Marketers pay for information on consumers, and companies such as IBM must meet their expectations. If marketers have been trained to strategize in terms of social aggregates and if their tools and practices are geared toward social aggregates, they may expect that such data be made available to them. Also, the media market is structured such that advertisers bid on access to a pool of potential customers and these are often packaged according to familiar aggregates, for instance, teenage-female- with-sports-interest. Is further granularity or "hyperpersonalization" even practical? IBM concedes that marketers and advertisers will continue to be interested in segment levels, that these will be important. Deepak Advani (2013), IBM's VP, Business Analytics Products and Solutions, describes how marketing evolves in a hybrid way that both takes into account the big trends as well as more specific insights into individual customers.

We don't expect that class and gender, for instance, will no longer be taken into account when identifying consumers of interest. Such important "master statuses" most likely will remain key variables in algorithms. Even so, let us imagine a world in which these are disregarded in favor of information about tastes and preferences. Would that eliminate the risk of social discrimination? Yes, but only if tastes and preferences are truly idiosyncratic and do not reflect and correspond to social status. On the other hand, if tastes and preferences are highly correlated to a master status, the threat of social discrimination remains unchanged. For example, country club membership is indicative of taste and preference but it is also generated by class position and is, in effect, a proxy for class.

Pierre Bourdieu (1985) uses the concept, *habitus*, to highlight those elements of a subject's bearing, desires, and tastes that are both very personal- even physical- and at the same time shaped by one's experience in social position within the stratifications of society. Another way to think of this is that we tend to live our master statuses of class, race, and gender in our clothing styles, preferred foods, magazine subscriptions, etc. To the extent Bourdieu is right, tastes will always be a reliable indicator of position. A study conducted by Michal Kosinski, David Stillwell, and Thore Graepel (2013:2) provides compelling empirical evidence of this. From 58, 000 volunteers they collected a data set of Facebook Likes (whereby users indicate interest or appreciation for such items as songs, books, electronics) and by means of data analysis "African Americans and Caucasian Americans were correctly classified in 95% of cases, and males and females were correctly classified in 93% of cases, suggesting that patterns of online behavior as expressed by Likes significantly differ between those groups allowing for nearly perfect classification. Christians and Muslims were correctly classified in 82% of cases, and similar results were achieved for Democrats and Republicans (85%). Sexual orientation was easier to distinguish among males (88%) than females (75%)."

SOCIAL GRAPH AND DISCRIMINATION

Now we turn our attention to Facebook's use of the social graph and discuss whether this innovative technique avoids discrimination. Facebook is the first social media public offering where content is entirely created by users (Bilton, 2012). From the user's perspective Facebook is a means to project oneself online and communicate and

share with family, friends, and acquaintances, but from the business perspective of Facebook this is rich, authentic material to profit from by selling access. Users have helped to create a juggernaut by their willingness to share personal data as currency to generate future products and services from Facebook. A new twist on the relationship of user and social media sites is the payment by social media to shoppers who offer product links to something they like. Posting product links that drive traffic and sales to retailers is now worth \$ 50 a month according to a NYT article from October, 2012. Is citizen marketing a paid promotion, an endorsement or a recommendation? The social media sites act as middle men by getting payment from retailers and paying for links directly into users' accounts. Some pay only if a purchase results but others pay for each click they send. Should this payment be disclosed to friends? How will users perceive the money making side of this new relationship? Will they mind that their friend is making money when sending a link? These questions have not been studied due to the novelty of the practice (Clifford, 2012).

Currently there are over 1 billion users of Facebook. The sheer scale of this population, from which to gather information, is unprecedented. With the launch of a new feature called Timeline in September 2011, users can post information about their past as well as current interests and activities which enable the site to get even more valuable data which it can sell to advertisers. "Zuckerberg is obsessed with figuring out how to amass more data by getting more people to spend more time sharing more things with their friends." Timeline will allow for a living digital scrapbook of your entire personal history" (Helft and Hempel, 2011). "Timeline is your entire life in one place, and it is unsettling to see the past presented as clearly as the present. Linking Facebook more closely to memories could make it harder for people to abandon the service for rivals" (Wortham, 2011:B1). Currently there are as many as 82 data categories from which Facebook draws information. That number will surely increase as Facebook continues to add commerce, video and mail to their services eventually to become the one platform for everything we do on the Web (Sengupta and Sisaro, 2011).

The incredible scale notwithstanding, according to Facebook executives the "social graph" is the most innovative feature of their enterprise. It is made possible by users adding "friends" and engaging in diverse forms of online interaction with their friends. The connections and networks can be mapped (hence the term, graph), analyzed, and most importantly, plumbed for social data. The ubiquitous "Like" button prompts users to click to show interest in or approval of a product, service, app, game, etc. Ads called Sponsored Stories then go out to friends. Facebook processes 2.7 billion "Likes", 300 million photo uploads, 2.5 billion status uploads and other data daily in order to determine which ads to send out to its users. In essence it has become the world's largest data crunching machine (Vance, 2012:67). Anne Kandra (2012:24) relates an incident of a man writing a humorous response "about an ad for a 55-gallon drum of 'personal lubricant'. Next thing he knew, he was in ads hawking the lube to his friends." Marketers are interested in seeing if Likes will be clicked along the paths of the social graph (which probably didn't happen in this case). If so, they identify a social network or networks of interest to make more concerted promotions.

With a Tom Sawyer twist, Facebook encourages its partners (e.g., corporations with fan pages, marketers, and advertisers) to have the social graph work for them. Carolyn Everson Facebook's Vice President for global sales described it this way in an interview conducted by Irina Slutsky (2011: 18):

It's way beyond just a social-media-advertising discussion. What we're trying to do at a simple level is be advocates on behalf of brands. If I like a brand story and I have a great experience that I post on my wall, it goes out to my friends and friends of friends-it's word-of-mouth marketing at a scale that we've never had before...

I feel very confident based on results that we're seeing, especially when friends are recommending to friends. Research shows that, on average, people are 68% more likely to remember seeing the ad if their friend has recommended it and twice as likely to remember the message of the ad.

At first glance, this process seems far removed from standard weblining because the product promotion appears to be dictated by consumers' social networks and not by businesses. However, friend networks are significantly homogeneous with regard to race, ethnicity, and class. Media buyers may very well attend to the same sets of privileged consumers as in the past not because of biographical identification but because of social affiliation. In any case, the effect is the same in that promotions and discounts do not reach traditionally underserved populations. Even more troubling is the practice of denying services to an individual based on analysis of his or her social network. While friend networks might reveal to advertisers that people who like Caribbean vacations might also like tanning lotions and sunhats, they might also reveal information that could be used for more sinister purposes. For example, health insurance companies could purchase Facebook data on social graphs to identify associations between social status/affiliations and medical problems by analyzing posts, e-cards, and frequency of Likes on social graphs for certain medical products. Individuals or families that apply for insurance that are found to share common characteristics with suspect social status/affiliations may be denied coverage.

POLICY VACUUM

We described how innovative strategies to record and mine users' social connectivity for marketing purposes present a new pathway for social discrimination. We find this particularly troubling because we see no effective policies to counteract this. Anti-discriminatory laws, the most powerful tool in a government's arsenal, are useless because they have been written to combat clear, blunt racial identification and mistreatment. Arguably the most important novelty of E-marketing strategies is that the commercial interests in social discrimination are realized while the means appear to be above reproach. If legal action of this type is untenable, what else can be done?

Marketers are ahead of the creators of public policy, and rules for the collection and use of big data have not been formulated. Big data has been called a revolution in measurement and is the future way that decisions will be made across industries. The data surge rises exponentially from web pages, phones, genomic information, surveillance videos, sensors, browsers and social media. Big data has been called the digital equivalent of the telescope (Lohr, 2013). As big data gets bigger the risk of discrimination by inference made from statistics gets greater.

CONCLUSIONS

In a survey conducted at the Berkeley Center for Law and Technology the majority of Americans said they do not want information collected about which sites they visit and have a strong aversion to online tracking in general. However, over 90% had not heard of the FTC proposal not to track and only 14% said they would like a tool to prevent websites from tailoring advertisements based on visited sites (Sengupta, 2012). Microsoft conducted a survey of users in the U.S. and Europe and found that over 75% wanted to default to the do-not-track option in their new Explorer 10 browser. Yet advertisers say that this threatens the barter system where consumers get free email, maps social networks and other Internet benefits from allowing tracking of online activity. "If we do away with this relevant advertising, we are going to make the Internet less diverse, less economically successful, and frankly, less interesting" said industry group general counsel for the Interactive Advertising Bureau (Singer, 2012).

In this paper, we have demonstrated that privacy protections have a checkered history especially in the United States. A future paper might examine global trends and legislation in this area. Fortune 500 companies have a vested interest in keeping it that way. Furthermore, we see in these regulatory efforts a penchant for protecting the privacy of personal information; however, little attention is being paid to how that information in an anonymous and aggregate form may be used in ways that are discriminatory or how a more subtle form of discrimination can be based on collective information of friends. This would require an appreciation that leaked private information is not the only risk for denial of goods, services, and opportunities; rather it is also made possible by the social graph.

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