

Prof. Frederik Zuiderveen Borgesius

'Equality, artificial intelligence, algorithms
and automated decisions:
How to detect and address discrimination in
the context of AI?



Radboud University



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28 April 2021, ERA
Applying EU anti-discrimination law

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THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/SB10001424127887323777204578189391813881534>

WHAT THEY KNOW

Websites Vary Prices, Deals Based on Users' Information

By JENNIFER VALENTINO-DEVRIES,
JEREMY SINGER-VINE and ASHKAN SOLTANI

December 24, 2012

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The Tiger Mom Tax: Asians Are Nearly Twice as Likely to Get a Higher Price from Princeton Review



ProPublica, 1 September 2015

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Non-discrimination law

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Non-discrimination law

Direct discrimination

Indirect discrimination

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Direct discrimination



South Africa, apartheid from 1948-1990

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Indirect discrimination

- (i) An apparently neutral practice
- (ii) that harms people with certain ethnicity
= Banned.

Racial Equality Directive, 2000/43/EC, Art 2(2)(b)

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Indirect discrimination

- (i) An apparently neutral practice
- (ii) that harms people with certain ethnicity
= Banned.
- (iii) Unless: practice has (a) legitimate
aim, (b) practice is proportionate

Racial Equality Directive, 2000/43/EC, Art 2(2)(b)

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Indirect discrimination

Not relevant whether discrimination happens by accident or on purpose.

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Propublica, 1 September 2015

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Indirect discrimination

Indirect discrimination:

- (i) Neutral practice?

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Indirect discrimination

Indirect discrimination:

- (i) Neutral practice?



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Indirect discrimination

Indirect discrimination:

- (i) Neutral practice? ✓
- (ii) Harms certain ethnic group?

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Indirect discrimination

Indirect discrimination:

- (i) Neutral practice? ✓
- (ii) Harms certain ethnic group? ✓

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Racial Equality Directive, 2000/43/EC, Art 2(2)(b)

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Indirect discrimination

(a) Profit maximisation legitimate aim?

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Indirect discrimination

(a) Profit maximisation legitimate aim?

Judge would probably say: 'yes'.

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Indirect discrimination

(b) Price differentiation proportionate?

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Indirect discrimination

(b) Price differentiation proportionate?

Depends...

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Indirect discrimination

(b) Price differentiation proportionate?

Depends...

- Product type (e.g. supermarket / caviar)
- Price difference (300 Euro / 3 cents)
- ...

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Indirect discrimination

Is price differentiation a prohibited form of indirect discrimination?

It depends.

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Data protection law could help

The General Data Protection regulation (GDPR), requirements include:

- Transparency about personal data use
- Data protection impact assessment (DPIA) for high-risk personal data practices

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Conclusion 1

In the short term: strictly enforce

- Non-discrimination law
- Data protection law.

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Conclusion 2

Longer term: new rules may be needed.

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Non-discrimination law, weak points

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Non-discrimination law, weak points

- Indirect discrimination ban: nuanced, but vague

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Non-discrimination law, weak points

- Indirect discrimination ban: nuanced, but vague
- AI-driven discrimination may remain hidden

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Non-discrimination law, weak points

Some problems: largely outside scope

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Non-discrimination law, weak points

Some problems: largely outside scope

(i) Reinforcing financial inequality

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Non-discrimination law, weak points

Some problems: largely outside scope

- (i) Reinforcing financial inequality
- (ii) Seemingly irrelevant criteria

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Non-discrimination law, weak points

Some problems: largely outside scope

- (i) Reinforcing financial inequality
- (ii) Seemingly irrelevant criteria

Premies verzekeringen verschillen tot op huisnummer

Nieuws - De premie voor de inboedel van een woonhuis of autoverzekering blijkt per postcode, huisnummer of zelfs huisnummertoevoeging te kunnen verschillen.

Gepubliceerd op: 26 augustus 2016



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What to do?

New rules may be needed:

Sector-specific rules

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Strengthening legal protection against discrimination by algorithms and artificial intelligence

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Thank you!

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