

Prof. Frederik Zuiderveen Borgesius

Equality, artificial intelligence, algorithms and
automated decisions:

How to detect and address discrimination in
the context of AI?

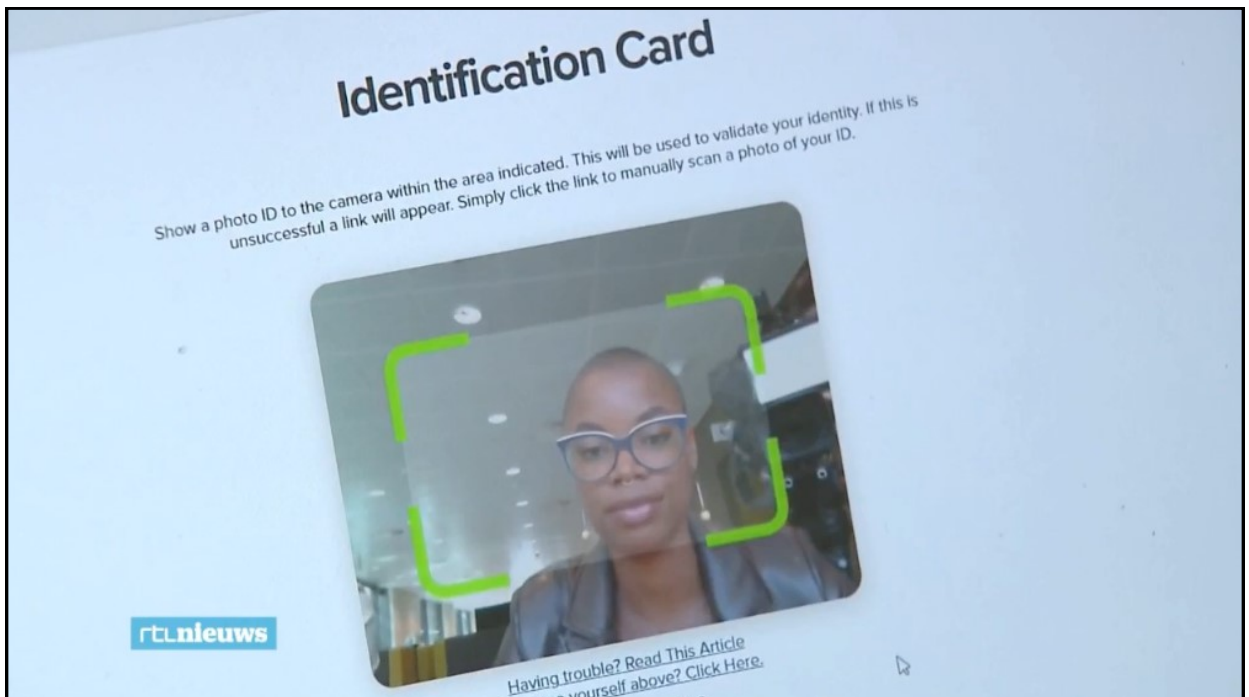


Funded under the 'Citizens, Equality, Rights and Values programme 2021-2027' of the European Commission



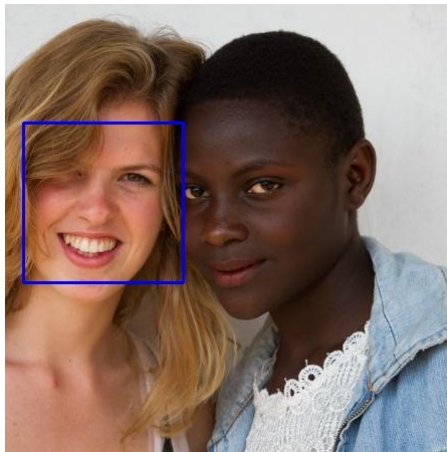
Radboud University

20 June 2023, ERA, Applying EU anti-discrimination law





Proctorio Is Using Racist Algorithms to Detect Faces



Motherboard 8 April 2021

THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/SB1000142412788732377204578189391813881534>

WHAT THEY KNOW

Websites Vary Prices, Deals Based on Users' Information

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

December 24, 2012

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



Propublica, 1 September 2015

Non-discrimination law

Non-discrimination law

Direct discrimination

Indirect discrimination

Direct discrimination



South Africa, apartheid from 1948-1990

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)

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)

Indirect discrimination

Not relevant whether discrimination happens
by accident or on purpose.

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



Propublica, 1 September 2015

Indirect discrimination

Indirect discrimination:

- (i) Neutral practice?

Indirect discrimination

Indirect discrimination:

- (i) Neutral practice? ✓

Indirect discrimination

Indirect discrimination:

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

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)

Indirect discrimination

- (a) Profit maximisation legitimate aim?

Indirect discrimination

(a) Profit maximisation legitimate aim?

Judge would probably say: 'yes'.

Indirect discrimination

(b) Price differentiation proportionate?

Indirect discrimination

(b) Price differentiation proportionate?

Depends...

Indirect discrimination

(b) Price differentiation proportionate?

Depends...

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

Indirect discrimination

Is price differentiation a prohibited form of indirect discrimination?

It depends.

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

Conclusion 1

In the short term: strictly enforce

- Non-discrimination law
- Data protection law

Conclusion 2

Longer term: new rules may be needed.

Non-discrimination law, weak points

Non-discrimination law, weak points

- Indirect discrimination ban: nuanced, but vague

Non-discrimination law, weak points

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

Non-discrimination law, weak points

Some problems: largely outside scope

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

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



What to do?

New rules may be needed:

Sector-specific rules

Proposal for EU AI Act. Final text unknown



EN English

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POLICY AND LEGISLATION | Publication 21 April 2021

Proposal for a Regulation laying down harmonised rules on artificial intelligence

The Commission has proposed the first ever legal framework on AI, which addresses the risks of AI and positions Europe to play a leading role globally.

Strengthening legal protection against discrimination by algorithms and artificial intelligence

Frederik J. Zuiderveen Borgesius  

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Thank you!

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Radboud University

