FATE COURSE - https://sites.google.com/view/upf-fate
SEMINAR 03 - CASES ON PROFILING AND AUTOMATED DECISIONS

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Case 1

Mediamax SA is a TV producer of different shows. In particular, Mediamax has been producing a very successful talent show in Spain. Due to the very large number of individuals interested in participating in the talent show across the country, Mediamax has implemented an AI based algorithm which analyzes the different videos uploaded by potential show participants. The devised model makes inferences from several personal data which has been provided by individuals, as well from automatically observed data in the videos, and provides an individual score for each participant. Individuals receiving a score lower than 30 are automatically excluded from the talent show without any human intervention. Albert has been excluded from the show in two consecutive years. As he believes he is a talented singer, he claims to Mediamax to have access to the criteria, factors and their preponderance used in the assessment.

Questions:

1.1. Does article 22 GDPR apply to this automated decision process?

1.2. Is Albert entitled to be granted access to meaningful information about the logic involved in the algorithm, as well as the significance and the envisaged consequences of such processing for Albert?

1.3. Which type of information should be provided to Albert and when? Take the following possibilities into account: (i) disclosure on the AI applications used; (ii) a complete description of their logic; (iii) access to the structure of the AI algorithm and to the datasets used to train the algorithms; (iv) access to the specific inferences made in relation to Albert's particular personal data. Can different information be supplied at different times (for instance, before uploading the videos and after having been evaluated and excluded from the show)?

1.4. Should Albert be entitled to challenge Mediamax's automated decision and to express his own view?

Case 2

SpeedyCar offers an app that links drivers with passengers (a similar service than the one provided by UBER in many cities). The app allows the algorithm-mediated matching of passengers and drivers, that is, the assignment of trips is completely automated and based on different data supplied by drivers and observed by the company (such as, for instance, the negative or positive reviews received from passengers). Payments and different types of earnings such as premiums are also solely automated. SpeedyCar also has an automated system of 'penalties and deductions': if a certain ride was considered invalid, then SpeedyCar's computer systems would automatically give the driver a monetary penalty. The app does not provide divers with an option to challenge these monetary penalties. Finally, if the system imposes five monetary penalties to a driver, a message is automatically sent to a three-member committee in the company that may decide to permanently or temporarily deactivate a driver's account.

2.1. Does article 22 GDPR apply to the following automated decision processes?
(a) The automated assignment of trips.

(b) The automated assignment of payments and premiums.

(c) The automated imposition of monetary penalties for invalid rides.

(d) The automated detection of a repeated infringement and the beginning of a review process that may end up with the expelling of a driver.

2.2 What would be the main consequence of applying article 22 GDPR to some or to all of the above situations?

Case 3[1]

Alice often buys at Nile.com. Alice only buys expensive luxury goods. She never searches for cheaper alternatives on the site, and never looks at second-hand offerings. Nile.com correctly infers that Alice is wealthy. When Alice logs in again, Nile.com increases all prices that Alice sees with 10%. Alice does not realise she pays a premium, and continues to buy luxury goods at Nile.com. The 10% extra that Alice pays is pure profit for Nile.com.

Bob is also registered as a Nile.com customer, but he rarely buys there. When Bob visits the site he always spends hours comparing different products, and searching for second-hand offerings. Nile.com correctly infers that Bob does not have much money. Unbeknownst to Bob, Nile.com decides to offer Bob a 10% discount on all prices. The personalised discount leads Bob to buy more products at Nile.com.

Carol is a new customer for Nile.com, who has not registered for the site. Nile.com operates many websites and can follow a visitor to those websites through a cookie with a unique identifier. Such cookie provides Nile.com with unique, specific, and effective profiles of website users but perhaps without traditional personally identifying information such as name and address. That is, Nile.com may not know Carol's name, but recognizes her as the person behind the cookie with ID xyz. By observing Carol's browsing behaviour, Nile.com learns a lot about her. Nile.com knows that the person behind cookie xyz often visits price comparison websites and buys mostly cheap or second-hand products. Carol also visited a website with information on debt relief. Nile.com infers that the person behind cookie xyz is price-sensitive and in some financial trouble. Therefore, when the person behind cookie xyz visits the Nile.com shopping website, Nile.com shows that person prices with a 10% discount but disables the option to buy now and pay later. However, the inference is inaccurate: she was visiting the debt relief website because she is employed as a social worker in the city council and wants to offer knowledgeable information to the people she advises.

Questions:

3.1 Does article 22 GDPR apply to this automated decision process?

3.2 Are consumers entitled to be granted access to meaningful information about the logic involved in the algorithm, as well as the significance and the envisaged consequences of such processing for the consumers?

3.3 For transparency purposes, which type of information to be provided to consumers is more useful? (i) general information about the AI applications used; (ii) a general disclosure that the website uses price discrimination; (iii) access to the specific inferences made in relation to a specific consumer's personal data; (iv) information about prices displayed to other consumers.

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[1] Examples taken from Zuiderveen Borgesius, Frederik and Poort, Joost, "Online Price Discrimination and EU Data Privacy Law", *J. J Consum Policy* (2017). DOI: 10.1007/s10603-017-9354-z. Available at SSRN: https://ssrn.com/abstract=3009188 or http://dx.doi.org/10.2139/ssrn.3009188

3.4 Should Carol be entitled to challenge Nile.com's automated decision and to argue that the inference about her financial status should be rectified and, as a result, she should be able to use the buy now, pay later option?