ADDRESSING EXTRAORDINARY ETHICAL ISSUES IN CONNECTING BILLIONS OF ORDINARY DEVICES TO THE INTERNET AND TO EACH OTHER

By Alysa Pfeiffer-Austin

It’s impossible to think about IoT without also considering Big Data. With billions of sensors spanning across a variety of IoT devices, there are unprecedented amounts of consumer data being collected and leveraged to improve society. Most commonly, data analytics are being used to uncover patterns within data sets to predict consumer behavior. In other words, statistical models and algorithms are used to transform information to help us better understand human behavior, design tailored products and services, predict preferences, and – in the healthcare industry – provide medical breakthrough.

Harnessing this power affords companies highly lucrative opportunities, but also implicates a new range of ethical issues for lawyers, clients, and policymakers. The ABA Section of Science & Technology Law assembled a panel of experts during the 2016 ABA IoT National Institute to examine the emerging legal and ethical issues surrounding data analytics. The panel included moderator Bennett Borden, Chief Data Scientist and Chair of the Information Governance and eDiscovery group at Drinker Biddle & Reath LLP; Solon Barocas, Postdoctoral Research Associate at Princeton University’s Center for Information Technology Policy; Lori Fena, President of Public Safety Guardian and former Chairwoman, Electronic Frontier Foundation; and Jules Polonestsky, Executive Director at Future of Privacy Forum.

Panelists touched upon the challenges associated with the quality of data, algorithmic inaccuracies and transparency, and ethical issues of unfair discrimination and stigmatization. Solon Barocas highlighted some of the challenges affecting the quality of data. For example, companies should take caution to ensure the data fairly represents the population to avoid disadvantaging low-income and underserved communities. Likewise, data sets and algorithms should be reviewed to account for any hidden biases. Next, Bennett Borden also emphasized the fact that data correlations are not always meaningful. Over time, algorithms may fail to consider certain variables and result in inaccurate predictions. This poses potential adverse consequences for consumers, who may be denied certain offers or benefits based on the underlying inaccuracy.

Another issue posed by panelists was whether it is ethical for companies to use data analytics to justify excluding certain populations from their offers and promotions. While this may be considered a discriminatory practice, Jules Polonestsky argued that such exclusions are merely an extension of an already prevalent and legal practice – marketing consumer products based on demographics. Conversely, these challenges could weaken consumer choice and, in turn, consumer trust in IoT products.

To address these concerns, the panel encouraged companies to balance data benefits against privacy risks, develop proper privacy disclosures, and take measures to ensure that consumers are in control of their data. Further, Lori Fena suggested that corporate policies should also be scalable, account for jurisdictional boundaries, and be fully articulated to the engineers involved.

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