Negative: AJOPTA – Algorithmic Justice & Online Platform Transparency Act

By David W. Helton and “Coach Vance” Trefethen

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

Case Summary: The AFF plan enacts the [Algorithmic Justice and Online Platform Transparency Act](https://www.markey.senate.gov/imo/media/doc/ajopta.pdf) (AJOPTA), a bill introduced into Congress in May 2021 but not yet (as far as we know) enacted. This bill is similar to the Algorithmic Accountability Act, so a lot of the AAA evidence cross applies here. The goal of AJOPTA is to eliminate racial bias in the use of AI in the economy as well as in voting rights, education, housing, and banking. Its big focus is online social media.

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Negative: AJOPTA

BACKGROUND

Full text of the bill

<https://www.markey.senate.gov/imo/media/doc/ajopta.pdf>

INHERENCY

1. Corporate policies

Companies can already use algorithmic audits and interest is growing because they have incentive to do it

Prof. Alex Engler 2021(Fellow in Governance Studies at The Brookings Institution, where he specializes in artificial intelligence; teaches classes on data science and visualization at Georgetown’s McCourt School of Public Policy, where he is an adjunct professor and affiliated scholar. MA in Public Policy from Georgetown Univ and MA of Science in Predictive Analytics from Northwestern Univ. March 12, 2021 “Auditing employment algorithms for discrimination” <https://www.brookings./research/auditing-employment-algorithms-for-discrimination/>(Accessed 6 July 2021)

There is a growing interest in the role of algorithmic audits in response to concerns about bias in algorithmic systems. In an algorithmic audit, an independent party may evaluate an algorithmic system for bias, but also accuracy, robustness, interpretability, privacy characteristics, and other unintended consequences. The audit would identify problems and suggest improvements or alternatives to the developers. Beyond improving systems, algorithmic auditing can also help to build consumer and client trust if its results are made public. A cottage industry has arisen around this idea, including firms that specialize in algorithmic auditing, such as O’Neil Risk Consulting & Algorithmic Auditing (ORCAA) and Parity AI, and other companies focused on algorithmic monitoring, such as Fiddler, Arthur, and Weights & Biases.

Companies are taking action to remove AI bias

Alex Hickey 2018 (Associate editor for the CIO Dive publication. At Industry Dive; specializes in IT infrastructure and future tech. She has also worked as a Research Assistant for the Miller Center of Public Affairs. BA in Foreign Affairs from the Univ of Virginia.) September 21, 2018 “Big tech is rolling out tools to counter AI bias. Is it enough?”<https://www.ciodive.com/news/big-tech-is-rolling-out-tools-to-counter-ai-bias-is-it-enough/532870/> (Accessed 6 July 2021)

Other big tech companies are working on the bias in AI issue too. Microsoft is building a tool to detect algorithmic bias, and in May Facebook launched its bias tool, Fairness Flow, which assesses how the company's algorithms treat groups of people, reports MIT Technology Review.

Companies are already seeking to solve employment discrimination

Zoe Rohrich 2019 (Associate Producer at PBS NewsHour. She holds a BA in Written Arts from Bard College. November 26, 2019 “Why these companies are rethinking the use of AI in hiring” <https://www.pbs.org/newshour/world/agents-for-change/why-these-companies-are-rethinking-the-use-of-ai-in-hiring> (Accessed 10 July 2021)

A growing body of research indicates that artificial intelligence systems used for job recruitment, which have become increasingly common, reinforce racial and gender inequality. Now, innovators are hoping to spur a kind of course correction by developing software that promises more accountability, and combats — rather than perpetuates — employment discrimination.

2. The Federal Trade Commission (FTC) and Status Quo laws

The FTC is already combating bias in AI algorithms  under existing law

K.C. Halm and Nancy Libin 2021 (Halm – attorney; Partner and advisor at Davis Wright Tremaine LLP. Formerly worked as a Clerk with the U.S. Senate Committee on Finance. JD from American Univ. Libin – attorney; co-chair of DWT's technology, communications, privacy and security practice; former chief privacy and civil liberties officer of the U.S. Dept of Justice. JD from the Georgetown Univ Law Center) April 26, 2021 “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm” <https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance> (Accessed 6 July 2021) (brackets in original)

Building on prior guidance issued in 2020, the Federal Trade Commission (FTC) recently warned in a new blog post that it will use its authority under existing laws to take enforcement action against companies that sell or use algorithms or artificial intelligence (AI) technology that results in discrimination by race or other legally protected classes. The agency urged companies developing or using AI to ensure their AI tools or applications do not result in biased outcomes because a failure to do so may result in "deception, discrimination—and an FTC [] enforcement action." The agency's latest pronouncement leaves no doubt that the FTC will be actively reviewing the market for potential bias or discrimination when AI-enabled applications and services are used to provide access to housing, credit, finance, insurance, or other important services.

FTC is serious about AI algorithms

K.C. Halm and Nancy Libin 2021 (Halm – attorney; Partner and advisor at Davis Wright Tremaine LLP. Formerly worked as a Clerk with the U.S. Senate Committee on Finance. JD from American Univ. Libin – attorney; co-chair of DWT's technology, communications, privacy and security practice; former chief privacy and civil liberties officer of the U.S. Dept of Justice. JD from the Georgetown Univ Law Center) April 26, 2021 “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm” <https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance> (Accessed 6 July 2021)

The FTC's warning demonstrates that the agency is serious about holding businesses accountable for using biased AI or for making promises that the technology cannot deliver. Companies must keep their practices grounded in established FTC consumer protection principles as the agency is likely to take a stronger stance on harmful, biased, and unfair uses of AI.

Existing laws are sufficient for the FTC to take action, and they will

Glenn Gow 2021 (contributor at the CFO Network. He was founder and CEO of Crimson Consulting Group, which specializes in helping large tech companies launch new products. MBA from Harvard Business School and a BSBA in Quantitative Management from Univ of Florida. May 30, 2021 “Consumer Protection and AI—7 Expert Tips To Stay Out Of Trouble” <https://www.forbes.com/sites/glenngow/2021/05/30/the-ftc-discrimination-warning-on-ai7-expert-tips-to-stay-out-of-trouble/?sh=465e84af68fe> (Accessed 16 June 2021)

In a recent blog post, the FTC has warned companies that they have sufficient laws to enforce truth, fairness, and equity when enforcing the developers and users of AI. The FTC essentially says that companies need to hold themselves accountable for their AI, or the FTC will take enforcement action against them.

Example of the FTC taking action against biased AI: Everalbum

K.C. Halm and Nancy Libin 2021 (Halm – attorney; Partner and advisor at Davis Wright Tremaine LLP. Formerly worked as a Clerk with the U.S. Senate Committee on Finance. JD from American Univ. Libin – attorney; co-chair of DWT's technology, communications, privacy and security practice; former chief privacy and civil liberties officer of the U.S. Dept of Justice. JD from the Georgetown Univ Law Center) April 26, 2021 “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm” <https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance> (Accessed 6 July 2021)

In the recent enforcement case, the FTC alleged that Everalbum, an app developer that used photos uploaded by users to train its facial recognition technology, failed to properly obtain users' consent. The agency also alleged that Everalbum made false statements about the users' ability to delete their photos upon deactivating their accounts. On these facts, the FTC secured a settlement and consent decree that required Everalbum to delete algorithms that used the data obtained without consent—a remedy that is akin to the "fruit of the poisonous tree" concept—and obtain consent before using facial recognition technology on user content. The FTC's latest reaffirmation of its authority to act in this area demonstrates that the agency will hold businesses accountable for using AI that may result in biased outcomes or for making promises that the technology cannot deliver. Its message is clear: "Hold yourself accountable – or be ready for the FTC to do it for you."

Status Quo laws giving FTC authority to combat biased AI: Section 5, FCRA, ECOA

K.C. Halm and Nancy Libin 2021 (Halm – attorney; Partner and advisor at Davis Wright Tremaine LLP. Formerly worked as a Clerk with the U.S. Senate Committee on Finance. JD from American Univ. Libin – attorney; co-chair of DWT's technology, communications, privacy and security practice; former chief privacy and civil liberties officer of the U.S. Dept of Justice. JD from the Georgetown Univ Law Center) April 26, 2021 “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm” <https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance> (Accessed 6 July 2021)

Three statutes provide the FTC significant authority to act in this area. Specifically, Section 5 of the FTC Act prohibits unfair or deceptive practices. The FTC's latest statement suggests that the agency believes it can use Section 5 authority, for example, to penalize entities selling or using "racially biased algorithms." Further, the agency also has authority to act under the Fair Credit Reporting Act (FCRA), which could be applied when an algorithm is used in a process that results in the denial of employment, housing, credit, insurance, or other benefits. Similarly, the Equal Credit Opportunity Act (ECOA)—which prohibits a company from using a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance—could be another basis for the agency to act. Thus, for example, if your algorithm results in credit discrimination against a protected class, you could find yourself facing a complaint alleging violations of the FTC Act and ECOA.

AI bias is new, but the FTC’s experience enables them to combat it – more specifics on: Section 5, FCRA, ECOA

Elisa Jillson 2021 (Attorney in the Division of Privacy and Identity Protection at the  Bureau of Consumer Protection of the Federal Trade Commission. JD from Univ. of Chicago Law School) April 19, 2021 “Aiming for truth, fairness, and equity in your company’s use of AI”<https://www.ftc.gov/news-events/blogs/business-blog/2021/04/aiming-truth-fairness-equity-your-companys-use-ai> (Accessed 7 July 2021)

The question, then, is how can we harness the benefits of AI without inadvertently introducing bias or other unfair outcomes? Fortunately, while the sophisticated technology may be new, the FTC’s attention to automated decision making is not. The FTC has decades of experience enforcing three laws important to developers and users of AI:
Section 5 of the FTC Act.
The FTC Act prohibits unfair or deceptive practices. That would include the sale or use of – for example – racially biased algorithms.
Fair Credit Reporting Act.

The FCRA comes into play in certain circumstances where an algorithm is used to deny people employment, housing, credit, insurance, or other benefits.

Equal Credit Opportunity Act.

The ECOA makes it illegal for a company to use a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance.
Among other things, the FTC has used its expertise with these laws to report on big data analytics and machine learning; to conduct a hearing on algorithms, AI and predictive analytics; and to issue business guidance on AI and algorithms. This work – coupled with FTC enforcement actions – offers important lessons on using AI truthfully, fairly, and equitably.

3. Market forces solve

“Power” of social media withers away without federal regulation in the face of market competition

Robbie Soave 2021 (senior editor at Reason magazine; serves on the D.C. Advisory Committee to the [U.S. Commission on Civil Rights](https://en.wikipedia.org/wiki/U.S._Commission_on_Civil_Rights)) 5 Oct 2021 “As Facebook Crumbles, the Case for Breaking It Up Is Weaker Than Ever” <https://reason.com/2021/10/05/facebook-whistleblower-outage-mark-zuckerberg/> (accessed 7 Oct 2021)

For the past several years, anti-tech crusaders on both the left and right have assured the public that Facebook is a menace, and can only be stopped via aggressive government action: antitrust legislation, Section 230 reform, and so on. Despite repeated threats, politicians never made good on their promises to do something—and yet Facebook is undeniably in a much weaker position. While it's hard to predict the future, it's even harder to picture the company mounting some massive comeback and becoming a popular trendsetter once again. Expectations that Facebook had fought its way into an unbeatable, permanent, market-dominant position suddenly look incredibly foolish.

SIGNIFICANCE

1. Social media hype, not harm

Partisan politicians on both sides like to blame Facebook and social media for everything – but it’s political hype

Robbie Soave 2021 (senior editor at Reason magazine; serves on the D.C. Advisory Committee to the [U.S. Commission on Civil Rights](https://en.wikipedia.org/wiki/U.S._Commission_on_Civil_Rights)) 5 Oct 2021 “As Facebook Crumbles, the Case for Breaking It Up Is Weaker Than Ever” <https://reason.com/2021/10/05/facebook-whistleblower-outage-mark-zuckerberg/> (accessed 7 Oct 2021)

Conservatives think the platforms engage in too much moderation and have corrupted democracy in favor of 2020 election winner Joe Biden; liberals think Facebook doesn't practice nearly enough moderation—allowing right-wing violence and faulty info about quack COVID-19 cures to spread—and also corrupted U.S. democracy in favor of 2016 election winner Donald Trump. That the most extreme and opportunistic members of both political factions like to blame all their problems on Big Tech probably tells us more about them than it does about Facebook.

“Power” of big tech over “disinformation” is an illusion. Facebook’s “domination” is dying and there’s lots of competition

Robbie Soave 2021 (senior editor at Reason magazine; serves on the D.C. Advisory Committee to the [U.S. Commission on Civil Rights](https://en.wikipedia.org/wiki/U.S._Commission_on_Civil_Rights)) 5 Oct 2021 “As Facebook Crumbles, the Case for Breaking It Up Is Weaker Than Ever” <https://reason.com/2021/10/05/facebook-whistleblower-outage-mark-zuckerberg/> (accessed 7 Oct 2021)

Since the mainstream media is already inclined to believe the very worst about social media—a disfavored upstart competitor—anyone who comes forward and tells the media exactly what they want to hear on this subject is going to be celebrated as a hero. Thus Haugen is already being hailed as some sort of brave truth-teller, though her perspective is very much the popular one in progressive circles: Facebook emboldens hate and disinformation, and it has far too much power.On this last charge, it's never been more apparent that something close to the opposite is true. Far from occupying some dominant and unassailable position in modern society, Facebook's relevance is probably fading. The company is desperate to attract the sorts of users—young people, mostly—who provide cultural cache and excite advertisers and investors. But this is increasingly a losing battle. Facebook—or "Boomerbook" as some call it—has never been less popular with the kids, and even Instagram faces tremendous competition from Snapchat, TikTok, and whatever cool new thing is coming along next. "The truth is that Facebook's thirst for young users is less about dominating a new market and more about staving off irrelevance," [wrote](https://www.nytimes.com/2021/10/04/technology/facebook-files.html) The New York Times' Kevin Roose in an article that sounded a highly pessimistic note with respect to the company's long-term health. "Facebook's research tells a clear story, and it's not a happy one."

2. Wrong target

Algorithms aren’t biased, data is.

Dr. Damini Gupta and Dr. T S Krishnan  2020 (Gupta, Ph.D. is the Associate Vice President and Lead (AI and Fintech) at Mphasis NEXT Labs in Bangalore, India. Heads the Ethical AI initiative at the labs and has a US patent for the AI solution that aggregates and analyzes data across multiple data sources. MBA from IIM Calcutta . Krishnan, Ph.D. is Senior Manager at Mphasis NEXT Labs in Bangalore, India. Ph.D. from IIM Bangalore in Production and Operations Management) 17 Nov 2020 “Algorithmic Bias: Why Bother?” <https://cmr.berkeley.edu/2020/11/algorithmic-bias/> (Accessed 1 July 2021)

Though “algorithmic bias” is the popular term, the foundation of such bias is not in algorithms. It is in data. Algorithms are not biased, data is! Algorithms learn the persistent patterns that are present in the training data. Multiple attributes of training data may make an AI algorithm biased. First, is due to bias present in the underlying data (decisions) used to train the AI algorithm. For example, if a judicial system is trained on historical judgements that are more unfavorable to Hispanics or Blacks, it will replicate the same and award harsher punishment to Hispanics and Blacks.

3. Useless audits

AJOPTA requires audits of AI software and its alleged, possible, or hypothetical impacts

Text of AJOPTA 2021. Website of Sen. Ed Markey (D-Mass.), author of the AJOPTA bill, May 2021 <https://www.markey.senate.gov/imo/media/doc/ajopta.pdf> (accessed 6 Oct 2021)



AI audits can be simply a Public Relations (PR) stunt

Alfred Ng 2021 (privacy and surveillance reporter for the Markup. He previously worked as a senior reporter for CNET, covering cybersecurity and privacy, and a reporter for New York Daily News) February 23, 2021 “Can Auditing Eliminate Bias from Algorithms?”) <https://themarkup.org/ask-the-markup/2021/02/23/can-auditing-eliminate-bias-from-algorithms>(Accessed 1 July 2021)

HireVue called in an auditing firm to help and in January touted the results of the audit in a press release. The audit found the software’s predictions ‘work as advertised with regard to fairness and bias issues,’ HireVue said in a press release, quoting the auditing firm it hired, O’Neil Risk Consulting & Algorithmic Auditing (ORCAA). But despite making changes to its process, including eliminating video from its interviews, HireVue was widely accused of using the audit — which looked narrowly at a hiring test for early career candidates, not HireVue’s candidate evaluation process as a whole — as a PR stunt. Articles in Fast Company, VentureBeat, and MIT Technology Review called out the company for mischaracterizing the audit.

Audits don’t do much other than provide good PR

Alfred Ng 2021 (A privacy and surveillance reporter for the Markup. He previously worked as a senior reporter for CNET, covering cybersecurity and privacy, and a reporter for the New York Daily News, covering police and crime. February 23, 2021 “Can Auditing Eliminate Bias from Algorithms?” <https://themarkup.org/ask-the-markup/2021/02/23/can-auditing-eliminate-bias-from-algorithms> (Accessed 27 2021)

The big question ever since: How do we solve this problem? Lawmakers and researchers have advocated for algorithmic audits, which would dissect and stress-test algorithms to see how they work and whether they’re performing their stated goals or producing biased outcomes. And there is a growing field of private auditing firms that purport to do just that. Increasingly, companies are turning to these firms to review their algorithms, particularly when they’ve faced criticism for biased outcomes, but it’s not clear whether such audits are actually making algorithms less biased — or if they’re simply good PR.

Definition of bias in auditing is too vague to mean anything. They’ll probably just end up endorsing the Status Quo

Laurie Clarke citing Mona Sloane 2021 (Clarke is a  senior reporter at Tech Monitor. She has also held reporting positions at NS Tech, Wired UK and IDG. She holds an undergraduate degree in psychology from UCL and a masters in media and journalism from the University of Glasgow.  - Sloane is a senior research scientist at the NYU Centre for Responsible AI and a fellow at the NYU Institute for Public Knowledge.) April 14, 2021 “AI auditing is the next big thing. But will it ensure ethical algorithms?” <https://techmonitor.ai/technology/ai-and-automation/ai-auditing-next-big-thing-will-it-ensure-ethical-algorithms> (Accessed 23 June 2021)

But legislation, if imprecise, won’t solve the issues dogging AI auditing. Sloane points out that the New York bill mentions “bias audits” without specifying what this means. “In the absence of a definition, or minimum requirements, or parameters, what people currently do as an audit sets the precedent and that’s what regulators look to – and that’s a very negative dangerous feedback loop.” Rights activists have aired similar concerns that the imposition of a lax AI audit could permit discriminatory software to get certified as having passed a fairness audit.

4. Too complex

Auditing algorithms is complicated, even for experts, and there aren’t enough experts

James Kobielus 2021 (independent tech industry analyst, consultant, and author. Senior Research Director in Data Management for TDWI Information Technology and Services. He has also worked as the Research Director and Lead Analyst at Futurum Research + Analysis. MA in Journalism from University of Wisconsin-Madison; BA in Economics from Univ. of Michigan)  March 4, 2021 “How We’ll Conduct Algorithmic Audits in the New Economy”<https://www.informationweek.com/big-data/ai-machine-learning/how-well-conduct-algorithmic-audits-in-the-new-economy/a/d-id/1340299> (Accessed 20 June 2021)

Throwing more algorithm experts at the problem (even if there were enough of these unicorns to go around) wouldn’t necessarily lighten the burden of assessing algorithmic accountability. Explaining what goes on inside an algorithm is a complicated task even for the experts. These systems operate by analyzing millions of pieces of data, and though they work quite well, it’s difficult to determine exactly why they work so well. One can’t easily trace their precise path to a final answer. Algorithmic auditing is not for the faint of heart, even among technical professionals who live and breathe this stuff. In many real-world distributed applications, algorithmic decision automation takes place across exceptionally complex environments. These may involve linked algorithmic processes executing on myriad runtime engines, streaming fabrics, database platforms, and middleware fabrics.

5. Conflict of interest

Audits won’t solve bias because of financial dependency links and perverse incentives

Professor Alex Engler 2021(Fellow in Governance Studies at Brookings Institution, where he specializes in artificial intelligence; teaches classes on data science and visualization at Georgetown’s McCourt School of Public Policy, where he is an adjunct professor and affiliated scholar. MA in Public Policy from Georgetown University; MA of Science in Predictive Analytics from Northwestern Univ.) March 12, 2021 “Auditing employment algorithms for discrimination” <https://www.brookings.edu/research/auditing-employment-algorithms-for-discrimination/> (Accessed 7 June 2021)

An algorithmic audit will not automatically prevent the use of biased algorithms in employment. While the idea of auditing is associated with accountability, auditing does not automatically produce accountability. When an algorithmic hiring developer contracts with an algorithmic auditor, that auditor is providing a service for a client—a service on which the auditor is often financially dependent. That financial dependency can fundamentally undermine the public value of the audit. While an auditing company may be concerned about its public reputation or holding high professional standards, the need to sell their services will be the most important factor and will ultimately decide which auditors survive and which fail. Although both ORCAA and the Northeastern University researchers were paid for their auditing work, it is relevant that the more thorough audit was done by academic researchers with other means of financial support, and the less thorough audit was done by a company with a direct financial dependency. This encourages consideration of the incentives that would lead companies to choose and enable comprehensive audits, as well as the incentives for auditors to execute robust and critical audits.

6. Nothing changes

Audits don’t produce change

Alfred Ng citing Deborah Raji 2021 (Ng is a journalist; previously worked as a senior reporter for CNET, covering cybersecurity and privacy, and a reporter for New York Daily News.- Deborah Raji is an auditor and a research collaborator at the Algorithmic Justice League) February 23, 2021 “Can Auditing Eliminate Bias from Algorithms?”February 23, 2021 “Can Auditing Eliminate Bias from Algorithms?”<https://themarkup.org/ask-the-markup/2021/02/23/can-auditing-eliminate-bias-from-algorithms> (Accessed 11 June 2021)

There’s no guarantee companies will address the issues raised in an audit.  “You can have a quality audit and still not get accountability from the company,” said Raji. “It requires a lot of energy to bridge the gap between getting the audit results and then translating that into accountability.”

7. More study needed

Algorithmic auditing is too new to be standardized in industry or government

Hayden Field  citing Amba Kak 2020 (Field – journalist; associate editor at Entrepreneur. She has also worked as a Artificial Intelligence Reporting Fellow at the National Press Foundation. BA in Journalism and Theatre from Univ of Georgia. - Kak is the director of global policy at the AI Now Institute.) October 30, 2020 “Algorithms Are Everywhere. How Are We Fighting Their Bias?”<https://www.morningbrew.com/emerging-tech/stories/2020/10/30/algorithms-everywhere-fighting-bias> (Accessed 22 June 2021) (ellipses in original)

Algorithmic auditing is so new that Google doesn’t even have enough data to display the term’s search popularity. At this point, it’s an “active field of research and activism rather than...a standardized practice both in industry and in government,” says Kak.

The algorithmic auditing industry has ‘shaky foundations’

Laurie Clarke 2021 (A senior reporter at Tech Monitor; undergraduate degree in psychology from UCL and a masters in media and journalism from the Univ of Glasgow.) April 14, 2021 “AI auditing is the next big thing. But will it ensure ethical algorithms?”<https://techmonitor.ai/technology/ai-and-automation/ai-auditing-next-big-thing-will-it-ensure-ethical-algorithms> (Accessed 1 July 2021)

At the beginning of this year, HireVue announced the results of an algorithmic audit carried out by O’Neil Risk Consulting and Algorithmic Auditing (ORCAA), which HireVue presented as exonerating its tools from bias. However, AI researchers such as Brookings Institution fellow in governance studies, Alex Engler, said that the company’s summary of ORCAA’s assessment was misleading because the auditors had only been instructed to look at a very narrow use case of HireVue’s technology. “In mischaracterising the audit, HireVue reveals the shaky foundations of the new algorithmic auditing industry,” Engler wrote in ‘Fast Company‘.

No way to measure fairness when it comes to AI algorithms

Maria Yatsenko 2019 (Market Research Specialist at the Apriorit; worked as a Content Writer with the IT Company. MA in Business Administration and Management, MA in Sociology, both from Dnipropetrovsk National Univ., Ukraine. November 28, 2019 “Biased Artificial Intelligence: Can Your AI Solution Be Freed from Built-in Prejudice?”<https://www.apriorit.com/dev-blog/649-ai-bias-in-ai> (Accessed 7 July 2021)

Fairness is essentially a social construct that developers can use to judge whether an algorithm is biased. Curiously, there’s no single definition of fairness when it comes to AI algorithms. A group of researchers from the University of Massachusetts determined 20 different variations of fairness [PDF] used in modern AI solutions.

8. A/T “Amazon employment discrimination scenario”

Employment discrimination algorithm was unique to Amazon – not widespread problem

Gabriel Boccara 2019 (Technology writer at Welcome to the Jungle. He previously worked as the Director of Development of Karma France. MBA from the ESSEC Business School. MA in Innovation from the ESCP Business School.)  July 2, 2019 “What if your recruiter were an algorithm?”) <https://www.welcometothejungle.com/en/articles/what-if-your-recruiter-were-an-algorithm> (Accessed 1 July 2021)

Predictive analytics discriminating against job applicants according to their gender is not an across-the-board problem; it was specific to Amazon and the algorithm they built. The most common error in AI, which is not unique to the world of recruitment, is the imitation effect.

Amazon stopped the program on their own

Jeffrey Dastin 2018 (Technology Correspondent at Reuters News Agency. He has also worked as a Legislative Intern at the United States Senate; BA in History from Yale Univ.) October 10, 2018 “Amazon scraps secret AI recruiting tool that showed bias against women”<https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G> (Accessed 6 June 2021)

Gender bias was not the only issue. Problems with the data that underpinned the models’ judgments meant that unqualified candidates were often recommended for all manner of jobs, the people said. With the technology returning results almost at random, Amazon shut down the project, they said.

DISADVANTAGES

1. First Amendment Violation #1: Denying freedom of speech

Link: AJOPTA bill text explicitly says they don’t like the content of online speech and want to regulate it

Text of AJOPTA 2021. Website of Sen. Ed Markey (D-Mass.), author of the AJOPTA bill, May 2021 <https://www.markey.senate.gov/imo/media/doc/ajopta.pdf> (accessed 6 Oct 2021)



Link: Government regulating the content of speech violates the First Amendment

**[Analysis: Sen. Markey’s words in the Bill text say that’s exactly why he says he’s writing the bill. He is upset about the content of online speech he thinks is “disinformation” or he doesn’t like “what content is visible.” ]**

Prof. Geoffrey R. Stone and Prof. Eugene Volokh 2015 (Stone – Prof. of law at Univ. of Chicago Law School. Volokh – prof. of law at UCLA law school) A Common Interpretation: Freedom of Speech and the Press, Sept 2015 <https://constitutioncenter.org/blog/a-common-interpretation-freedom-of-speech-and-the-press> (accessed 6 Oct 2021)

The Supreme Court has held that restrictions on speech because of its content—that is, when the government targets the speaker’s message—generally violate the First Amendment. Laws that prohibit people from criticizing a war, opposing abortion, or advocating high taxes are examples of unconstitutional content-based restrictions. Such laws are thought to be especially problematic because they distort public debate and contradict a basic principle of self-governance: that the government cannot be trusted to decide what ideas or information “the people” should be allowed to hear.

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights

Prof. Stephen J. Wermiel 2018. (professor of practice of constitutional law at American University Washington College of Law) The Ongoing Challenge to Define Free Speech (article is undated but says it was written 227 years after the ratification of the Bill of Rights in 1791) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/> (accessed 6 Oct 2021)

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, “is the matrix, the indispensable condition of nearly every other form of freedom.” Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

2. Regulation stifles competition and makes the Affirmative’s problems worse

Link: AFF Plan imposes big new regulatory burdens for online social media

It’s in the text of their bill. If the regulations are tiny and insignificant, then Affirmative loses on topicality, since they’re not making a substantial reform.

Link: New regulatory regime would strengthen Facebook’s dominant position and block new competition

Robbie Soave 2021 (senior editor at Reason magazine; serves on the D.C. Advisory Committee to the [U.S. Commission on Civil Rights](https://en.wikipedia.org/wiki/U.S._Commission_on_Civil_Rights)) 5 Oct 2021 “As Facebook Crumbles, the Case for Breaking It Up Is Weaker Than Ever” <https://reason.com/2021/10/05/facebook-whistleblower-outage-mark-zuckerberg/> (accessed 7 Oct 2021)

Of course, tinkering with the liability protections enjoyed by social media sites could actually help Facebook stave off competition: As long as the company remains the largest social media site, its armies of moderators might be better prepared to deal with increased moderation demands than smaller rivals like Twitter. Facebook is also better positioned to lobby and steer whatever new governmental agency arises to enforce a modified version of Section 230. All those who support Facebook's bid for ongoing relevance should want the company to hand-pick the members of a new federal bureaucracy tasked with regulating Big Tech's policies; on the other hand, anyone who thinks the company should face free and fair competition might prefer to leave the matter out of the government's hands.

Impact: Turn the harms.

The harms in the Affirmative case about big social media using its power to discriminate get worse if you block new upstarts and competition. The Status Quo is doing a fine job of diminishing their power, if only we let it.