

**BEFORE THE  
FEDERAL TRADE COMMISSION**

---

COMMENTS ON

**BIG DATA: A TOOL FOR INCLUSION OR EXCLUSION?**

PROFESSOR HELEN NISSENBAUM, NEW YORK UNIVERSITY

AND

ELANA ZEIDE, NEW YORK UNIVERSITY

---

The enthusiasm for big data and its potential benefits increasingly drive decision and policymaking across contexts from healthcare to urban living. As discussed during the Commission’s workshop held on September 15, 2014, big data approaches present unique challenges regarding the potential for intentional and unintentional discrimination and disparate impact. Discrimination resulting from big data analytics may not be rational nor easily detectable in accordance with our current legal and conceptual frameworks. Such discrimination may result from a wide variety of algorithmically-driven events including targeted advertising, lending, housing and employment opportunities, and eligibility for better educational opportunities.

Beyond these specific instances, however, it is important to take into account inequities inherent within the current political economy of big data. In particular, the concentration of data and data-processing power in large private entities exacerbates the disparity between the data “haves” and “have-nots” and creates an asymmetry between the information available to these institutions about data subjects and the information individuals have about big data decisionmakers in return.

*Data Haves and Have-Nots.* The benefits of big data frequently accrue from information held and wielded by large commercial and financial institutions. These private entities have vastly superior resources not only to collect, but to centralize, analyze, and deploy information about individuals, even if put towards publicly-oriented ends. Reliance on these entities’ comprehensive data and sophisticated analytic capabilities entails that big data will first and foremost serve these institutions’ vested interests.

*Data Asymmetries.* Big data analysis by powerful private institutions may have life-altering effects, but individuals have negligible means of interrogating these actors and processes. These entities have considerable knowledge about individuals. Under the current structure, however, data subjects cannot access, let alone amass,

the same breadth and depth of information about the actors whose data-based determinations shape their opportunities. Even if this were possible, individuals do not have the technological resources to extract the same value from large data sets. The concerns we have are similar to those that informed the landmark report on *Records, Computers, and the Rights of Citizens*, which concluded that “the net effect of computerization is that it is becoming much easier for record-keeping systems to affect people than for people to affect record-keeping systems.”<sup>1</sup>

The divide between the data-rich and data-poor and the asymmetry of information between institutions and their data subjects are entrenched in the current big data framework. Accordingly, solutions that rely solely upon increased transparency and individuals’ access to information about themselves cannot remedy these inequalities. They are not inevitable, however, and we urge the Commission to consider these disparities to ensure that current and emergent uses of big data do not exacerbate existing inequalities.

Respectfully yours,

Prof. Helen Nissenbaum  
Department of Media, Culture & Communication  
New York University

Elana Zeide  
Information Law Institute  
New York University

OCTOBER 31, 2014

---

<sup>1</sup> SEC’Y’S ADVISORY COMM. ON AUTOMATED PERS. DATA SYS., U.S. DEP’T OF HEALTH, EDUC. & WELFARE, RECORDS, COMPUTERS, AND THE RIGHTS OF CITIZENS (1973).