Proposed Algorithmic Accountability Act Targets Bias in Artificial Intelligence

IN SHORT

The Situation: There have been numerous reports that computer algorithms used in artificial intelligence ("AI") systems have created or contributed to biased and discriminatory outcomes. To reduce such bias and discrimination, Senators Cory Booker (D-NJ) and Ron Wyden (D-OR) recently proposed the Algorithmic Accountability Act of 2019, with Rep. Yvette Clarke (D-NY) sponsoring an equivalent bill in the House. The Act is the first federal legislative effort to regulate AI systems across industries in the United States, and it reflects a growing and legitimate concern regarding the lawful and ethical implementation of AI.

The Result: The Act authorizes and directs the Federal Trade Commission ("FTC") to issue and enforce regulations that will require certain persons, partnerships, and corporations using, storing, or sharing consumers' personal information to conduct impact assessments and "reasonably address in a timely manner" any identified biases or security issues.

Looking Ahead: The Act would affect AI systems used not only by technology companies, but also by banks, insurance companies, retailers, and many other consumer businesses. Entities that develop, acquire, and/or utilize AI must be cognizant of the potential for biased decision-making and outcomes resulting from its use. Such entities should make efforts now to mitigate such potential biases and take corrective action when it is found.

Employed across industries, AI applications unlock smartphones using facial recognition, make driving decisions in autonomous vehicles, recommend entertainment options based on user preferences, assist the process of pharmaceutical development, judge the creditworthiness of potential homebuyers, and screen applicants for job interviews. AI automates, quickens, and improves data processing by finding patterns in the data, adapting to new data, and learning from experience. In theory, AI is objective—but in reality, AI systems are informed by human intelligence, which is of course far from perfect. Humans typically select the data used to train machine-learning algorithms and create parameters for the machines to "learn" from new data over time. Even without discriminatory intent, the training data may reflect unconscious or historic bias. For example, if the training data shows that people of a certain gender or race have fulfilled certain criteria in the past, the algorithm may "learn" to select those individuals at the exclusion of others.

This *Commentary* discusses the Algorithmic Accountability Act of 2019, which is the first federal legislative effort to regulate AI systems across industries in the United States and reflects a growing and legitimate concern regarding the lawful and ethical implementation of AI.

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THREE KEY TAKEAWAYS

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1. As AI becomes ubiquitous in its applications across industries, so does its potential for bias and discrimination. Understanding the inherent biases in underlying data and developing automated decision systems with explainable results will be key to addressing and correcting the potential for unfair, inaccurate, biased, and discriminatory AI systems.

2. Whether or not the Act becomes law in its present form or becomes law at all, algorithmic bias is a significant issue—and consumer businesses can take steps to address it now.

3. Qualified individuals both within and outside the company should be selected and empowered to investigate and rectify bias and security flaws in AI systems. Outside consultants should be consulted on best practices. Legal counsel should be consulted regarding potential legislation and regulation (within and outside the United States) and regarding how to handle document assessments, disclosures, and corrective actions.

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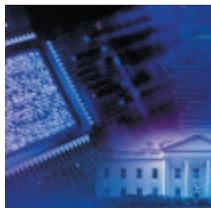Dallas

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