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GUEST HEADNOTE

Boxing and Concepts of Harm

MARTIN ABRAMS

I am not afraid of targeted advertising. Banner ads either attract my attention or not. I am not paranoid about the explosive use of analytics powered by ubiquitous data collection. I find credit scoring a better alternative to judgment-based lending. I feel safer when automated fraud tools assess my browser to determine whether I am a good consumer or bad hacker. I like personalization most of the time. In fact, I usually win when merchants use personalization. Yet I am deeply concerned about the ramification of a surveillance society combined with advanced analytics. Business processes are evolving at a very rapid rate, and if we are not careful we may go from a commercial marketplace that uses information to create value for both consumer and enterprise, to one where the individual is boxed.

What is boxing? Boxing is where a consumer's vision and choices are limited by his or her digital history and the analytics that make judgments based on that digital history. Boxing happens when I go to a website and my horizon is limited by the digital history that informs the analytical engine of who I have been, what I have purchased in the past, and what will be attractive to me in the future. Boxing is where

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my vision of what is possible is limited by the box, and my choices are restricted by the four walls, top and bottom. Boxing is when I have no easy options for breaking out of the box.

Boxing already exists in some sectors of the economy. My credit eligibility is determined by my credit score. I have no choice but to be ranked by these probability-based tools. However, there are protections in place. First, I am warned when I am denied credit, and informed of the factors. I can inspect the underlying data, and request changes when I believe the data is inaccurate. Furthermore, credit scoring algorithms must comply with laws such as the Equal Credit Opportunity Act.

We are boxed in other ways as well. The frequent flyer programs at the airlines box us. I am a winner in that setting. My airline gives me a special phone number and recognizes my number when I call. When a flight is cancelled, I ignore the long line to rebook and call my special phone number. The airline's algorithms recognize that I flew 163,000 miles last year and I am sure to hit better than 100,000+ this year when determining who gets the upgrades. I am truly lucky. However, my associate flies about half of what I fly. He has no special phone number to call, and never gets offered an upgrade. When he wants to book a complicated itinerary he needs to figure it out himself, there is no nice person at the end of a special line. The worst is when his flight is cancelled. The algorithms have predicted that his profitability upside is limited, so he gets no service at all.

The United Kingdom's Office of Fair Trading has joined the UK Information Commissioner, and other regulators in Europe, the FTC and the U.S. Congress, in expressing concern about behavioral targeting based advertising. The issue isn't really about those banner ads. While it may be about deep packet inspection, it isn't the advertising based on the analysis of your emails. The issue is actually what is coming down the road: that an individual will be trapped by

their data and not be able to explore new horizons and remake themselves. This is ironic since the Internet has been the mechanism for breaking down barriers to knowledge. Policymakers and consumers are both concerned about being boxed.

Regulators everywhere are moving towards outcomes-based regulation. That means defining harms, including social harms that are to be avoided. In the United States we have defined a number of harms, including fraud, bad security, deception, and intrusion without value. I believe we are on the brink of defining a harm related to not having a breaker switch related to boxing — the ability to say “Stop the personalization, I want to see the entire picture.”

We are in the beginning stages of a digital age. Data will be collected and it will be run through digital engines. Merchants will continue to customize experiences for all of us, and frequent fliers will continue to have a special number. However, we need to develop mechanisms that return some level of control to the consumer. There must be a way out of the box. The breaker switch must work.

There are exceptions, such as credit analysis and fraud. In those situations we need explicit consumer protections for the failings of probability and inaccurate data. We have policy models for that.

We can use many mechanisms for returning consumer control. It could be special protections where the consumer risks from boxing are highest, or it could be consumer choice to see an entire website. The options are open today. They will not be open in the future.

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