SMART CITIES: CIVIL RIGHTS PART II

"A perfectly functioning infrastructure of smart cameras taking note of our every action and characteristic would be a nightmare for our privacy and liberty." —Jay Stanley, The Dawn of Robot Surveillance: AI, Video Analytics, and Privacy, *ACLU (June 2019)*

Facial Recognition

Bias and inaccuracies

Recent reports have laid bare some of the weaknesses in facial recognition technology. For instance, the tech is actually likely to err when attempting to identify African-American and other racial and ethnic minorities. It also struggles with women and young people—not just in failing to identify them, but by misidentifying them as someone else. This can be dangerous for citizens in situations where facial recognition is used as a means to find a suspected criminal, and by default, creates disparate impact on people within these groups.

Predictive Policing

Predictive policing, hinted at by its name, is a way for law enforcement to forecast criminal activity. This is accomplished through massive amounts of data being fed into computer systems, where algorithms analyze the data and make predictions of potential future crimes. While this has been hailed by some as a more objective, cost-effective, and time-saving measure than relying on individuals in law enforcement alone, others argue that there is little accountability or transparency in these AI algorithms. Algorithms that rely on historical data has the potential to reproduce biases ingrained in a locality's history.

Interesting case law

Webster v. Hennepin Cty., 910 N.W.2d 420 (Minn. 2018). This case is interesting in that it shows that localities are required to be transparent not just with information sought by a data request, but also in their procedure for responding to such requests. In August 2015, Webster submitted a request to Hennepin County for data about the its use or planned implementation of mobile biometric technologies (facial recognition). After months waiting for a response, Webster retained counsel, citing a violation of the Minnesota Data Practices Act. The Minnesota Supreme Court held that the county's established procedures did not "insure" timely responses to data requests, and therefore did violate the Minnesota Data Practices Act.

Other helpful resources

Face Recognition, EFF, https://www.eff.org/pages/face-recognition (last updated Oct. 24, 2017).

Clare Garvie, Alvaro Bedoya, & Jonathan Frankle, *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, GEO. L. CTR. PRIVACY & TECH. (Oct. 18, 2016), https://www.perpetuallineup.org/.

Brendan F. Klare, Mark J. Burge, Joshua C. Klontz, Richard W. Vorder Bruegge, & Anil K. Jain, *Face Recognition Performance: Role of Demographic Information*, 7 IEEE TRANSACTIONS INFO. FORENSICS & SEC.

178 (2012), https://www.documentcloud.org/documents/2850196-Face-Recognition-Performance-Role-of-Demographic.html.

Angèle Christin, *The Mistrials of Algorithmic Sentencing*, LOGIC MAG. (Dec. 1, 2017), https://logicmag.io/justice/the-mistrials-of-algorithmic-sentencing/.

Tim Lau, *Predictive Policing Explained*, BRENNAN CTR. JUST. (Apr. 1, 2020), https://www.brennancenter.org/our-work/research-reports/predictive-policing-explained.

Impact of Facial Recognition on Immigrant Communities

Databases and Immigration and Customs Enforcement (ICE)

ICE seems to be relying more heavily on gang-databases to arrest immigrants than ever before. Many argue that loose criteria used to identify potential gang members leads to individuals with no gang affiliation being swept up in raids meant for serious criminals (see Thompson, below). One major concern is that individuals are not notified when they are added to such lists, nor are they given a way to argue for its removal. Similarly, Maryland passed a law in 2013 allowing illegal immigrants to receive "limited licenses," meaning they could use them to legally drive a vehicle, but they could not be used as a form of identification for flights. This law was passed in an effort to increase safety on roads, because a driving test is still required to obtain such a license, as is the purchase of minimum insurance. However, ICE also has access to this drivers license database, and any ICE agent with credentials can access the database remotely, without a warrant. Maryland is attempting to limit this access for ICE agents.

National Security

The Schengen Area calls itself the "World's Largest Visa Free Zone." We have seen in recent years that this lack of barriers has actually become a problem for countries following the Syrian Civil War and the huge influx of refugees to Europe. And while the vast majority of those refugees are civilians, there have also been IS fighters who have moved into this barrier-less zone. Enter a positive use of facial recognition technology: law enforcement could still allow refugees to move through the countries but use facial rec to be able to pick out IS members.

Other interesting resources

Christie Thompson, *How ICE Uses Secret Police Databases to Arrest Immigrants*, MARSHALL PROJECT (Aug. 8, 2017, 7:00 A.M.), https://www.themarshallproject.org/2017/08/28/how-ice-uses-secret-police-databases-to-arrest-immigrants.

Schengen Area – The World's Largest Visa Free Zone, SCHENGEN VISA INFO, https://www.schengenvisainfo.com/schengen-visa-countries-list/

Reply to Parliamentary Question R-002602/2015, Eur. Parliament (Jun. 29, 2015), https://www.europarl.europa.eu/doceo/document/E-8-2015-002602-ASW_EN.html

Erin Cox, *State Senate approves driver's licenses for illegal immigrants*, BALTIMORE SUN (Mar. 25, 2013, 8:12 P.M.), https://www.baltimoresun.com/politics/bs-md-immigrant-licenses-20130325-story.html.

Kevin Rector, *ICE has access to Maryland driver's license records. State lawmakers want to limit it.*, BALTIMORE SUN (Feb. 26, 2020), https://www.baltimoresun.com/politics/bs-md-pol-ice-mva-bill-20200227-rsgqqajmwne4hollsz4svgpa6m-story.html.