

MOVING FAST AND BREAKING THINGS

SOCIAL MEDIA AND UNFAIR COMMERCIAL PRACTICES

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CONTEXT

On 6 April 2018, the Italian Competition Authority launched an investigation against Facebook, labeling their information disclosures as alleged unfair commercial practices. The Unfair Commercial Practices Directive (UCPD) is an EU maximum harmonization instrument on consumer protection with the following main features: a) the open clause fairness test (Art. 5); b) the division between misleading and aggressive practices (Arts. 6 and 8); and c) the black-listed practices in the Annex. The Italian Competition Authority argues that Facebook practices of non-disclosing how the company handles and sells data, as well as the undue influence exercised on users through the collection of all personal data in an unconscious and automatic way. If found to be an unfair practice, Facebook information disclosures could suffer the same fate in all Member States.

RQS

How do social media companies share profiling data? Are these practices unfair under European law? If so, who is the 'average consumer' of social media services, and what remedies are available for this infringement?

Doctrinal legal research
Case study: Facebook

METHODS

To determine whether a practice is unfair, Art. 5 UCPD imposes a 3-leg test. The most pressing part of this test is determining whether the transactional behavior of the 'average consumer' is influenced. This test has so far been normative, but applied to the realm of social media, it could benefit from data-driven evidence. The goal of this paper is to highlight potential problems with using a normative test, and to start an academic debate on whether and/or how data science can help judicial interpretation, and what methodologies could be proposed in this respect.

BIG DATA AS EVIDENCE

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This research is ongoing. Results will be presented at the Amsterdam Privacy Conference 2018.