

From Tal Z. Zarsky, “Mine Your Own Business!: Making the Case for the Implications of the Data Mining of Personal Information in the Forum of Public Opinion,” 5 Yale Journal of Law and Technology:

To facilitate our discussion, let us examine several hypothetical individuals affected by the technical examples of the data mining practices discussed thus far:

1. Ms. Violet is a frequent shopper at an e-commerce “grocery” website. Upon returning to the site this weekend to conduct her weekly purchases, she is greeted by the following message:

“Welcome back Ms. Violet, I hope that you had a nice weekend. Please note that your favorite cheese is out of stock, we have a fresh supply of your favorite strawberries, and one of your preferred kinds of toilet paper is on sale. Just one more thing: Happy Birthday! (Click here for specials on birthday cakes).”

Other, less frequent customers did not receive similarly cheerful messages, and were not offered the mentioned discounts on toilet paper and birthday cakes.

2. Mr. Green is a minimum wage worker who lives in a poor neighborhood. Even though he is interested in taking out an insurance policy, he never receives any promotions, solicitations, or special offers for insurance. The situation is radically different for his identical twin, an executive with a high salary who receives many such offers.

3. Ms. Red is a member of a minority group, a fact well known to the e-commerce site she uses for shopping. After conducting marketing research, the company operating the site decided to charge members of this minority group higher rates for various products (a decision that may or may not have been motivated by bigotry).

4. Mr. Yellow is a philosophy student from a prominent family. Due to the fact that he is extremely busy writing his thesis on existentialism, he does all of his book shopping online. Upon entering an e-commerce website, he navigates straight to the book he is interested in, does not check for sales or discounts, and pays with his parents’ credit card. The online vendor, observing this pattern, never informs him of any shipping discounts and has recently started to charge him a little more for every book purchased. In addition, the e-commerce site has determined the timing element of Mr. Yellow’s purchasing patterns, and tends to charge higher prices towards the final weeks of the semester, when Mr. Yellow is in dire need of books.¹

5. Mr. Orange often purchases through an e-commerce grocer and has recently stopped buying cigarettes. The grocer, anxious to cash in on potentially lucrative

¹ This example was inspired by Professor Eli Noam of the Columbia University Business School, who mentioned that such practices are at least possible (if not already occurring).

tobacco sales, notices that Mr. Orange has just purchased a “nicotine patch” and concludes that he is trying to quit smoking. Mr. Orange is then presented with cigarette ads at the websites he visits, and even receives a “complementary” cigarette pack in his most recent grocery shipment.

6. Mr. Black is a forty year old man who is paying a high premium for life insurance. The high rate is due to the fact that Mr. Black has suffered two heart attacks in the last five years (a fact that Mr. Black himself revealed to his insurer). An employee at the insurance firm with an entrepreneurial spirit launched a private data mining campaign, searching for people with physical problems who might be concealing such information from their employers. His search identifies Mr. Black as an individual who might fit such criteria, correctly as it turns out. Thereafter, the employee informs Mr. Black’s employer of Mr. Black’s heart condition (for a hefty fee, of course), leading to Mr. Black’s immediate dismissal.

In addition, it has come to Mr. Black’s attention that computer hackers have broken into the insurance firm’s database, and downloaded some of his personal information.

7. Ms. White received advertising materials promoting an insurance policy for her mother who, according to the firm’s records, has just moved to Ms. White’s residence. Receiving the materials causes Ms. White distress, as in reality her mother has recently passed away (Ms. White had her late mother’s mail forwarded to her address).² In addition, the insurance materials are taking up space in her mailbox and lengthening the time (and as we know, time is money) that Ms. White usually devotes to sorting her mail.

8. Mr. Blue, who is interested in taking out an insurance policy, received notice from his insurance firm indicating that he would be charged a high premium for coverage. Mr. Blue, a man of good mental and physical health, is bewildered. He does not know that the firm has erroneously categorized him as a “high-risk person” due to the fact that he takes Prozac regularly. However, the insurance company has made an error in its records—it is not Mr. Blue who is taking the Prozac, but Mr. Blues, his next-door neighbor.

9. Ms. Gray has also received notice indicating that she would be charged a high premium for insurance. In her case however, the facts accumulated by the company are true: Ms. Gray subscribes to *Scuba Magazine*, visits Internet sites discussing bungi jumping, and travels each year to the Himalayas. Given these facts, the insurance firm concluded that Ms. Gray is a “risk-taker” and priced her policy accordingly. However, this conclusion is far from accurate, as Ms. Gray’s idea of risk-taking is buying blue chip stocks and boarding the subway after 6 p.m. She is currently writing an article about the dangers of extreme sports, and travels to Tibet to visit her son.

² This example has been inspired by GARFINKEL, *supra* note **Error! Bookmark not defined.**, at 156.

Every one of the stories in this rainbow of hypotheticals represents a current concern in the field of information privacy. Together, they give a contemporary snapshot of the information privacy debate. Though they differ in concept and complexity, all these perspectives support a conviction that the current state of affairs in the personal information field is not acceptable, and that changes must be made immediately. These concepts have been the subject of widespread discussion and argument prior to the emergence of data mining practices, and they continue to be relevant today, when privacy experts draw on the example of data mining to strengthen their arguments about the increasing dangers to privacy.