

# FORMS OF ARTIFICIAL INTELLIGENCE AND THE IMPACTS ON CONSUMER PATTERNS AND THE PROTECTION OF PERSONALITY RIGHTS

DAS FORMAS DE INTELIGÊNCIA ARTIFICIAL E OS IMPACTOS NOS PADRÕES DE CONSUMO E A PROTEÇÃO DOS DIREITOS DA PERSONALIDADE

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## ABSTRACT

In this research, the concept of consumer as a minority and vulnerable group will be presented in relation to the advertisements that are presented to him daily via social networks and other means of communication through artificial intelligence. Artificial intelligence checks people's consumption patterns and uses this information to reproduce ads that are supposed to be in the consumer's interest, which can lead to a violation of their personality rights, such as intimacy, privacy, among others. The research used the hypothetical-deductive method, analyzing the existing doctrines on the subject, as well as scientific articles and jurisprudence.

**Keywords:** Artificial intelligence. Personality rights. Right to privacy.

## RESUMO

*Nesta pesquisa apresentar-se-á o conceito de consumidor como minoria e grupo vulnerável em relação aos anúncios que lhe são apresentados diariamente via redes sociais e demais meios de comunicação por meio da inteligência artificial. A inteligência artificial verifica quais são os padrões de consumo das pessoas e utiliza essas informações para a reprodução de anúncios que sejam, supostamente, do interesse do consumidor, o*

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que pode levar a violação de seus direitos da personalidade, como intimidade, privacidade, dentre outros. A pesquisa se utilizou do método hipotético-dedutivo, analisando as doutrinas existentes acerca do tema, bem como artigos científicos e jurisprudência.

**Palavras-chave:** Inteligência artificial. Direitos da personalidade. Direito à privacidade.

## 1. INTRODUCTION

This present work will address the concepts about artificial analytical intelligence and how they influence the consumer's behavior, which is seen as a vulnerable group.

Initially, this work will approach the consumer as a vulnerable group and their legal protection in the country, - since consumers are the most impacted group by artificial intelligence in relation to advertisement - to then, deal with the concepts of artificial intelligence, analytical and algorithmic, including predictive analytical intelligence, which in turn has the function of generating reports with the consumption pattern of the user of social media and other shopping sites.

Later on, the Brazilian legislation on the subject will be analyzed, as the erosion of personality rights and the violation of personality rights, such as: honor, image, voice, intimacy, privacy, among others..

The research intends to cover the theoretical field, analyzing the existing subject's bibliography, like specialized legal journals, foreign doctrine and the jurisprudence applied to the proposed discussion.

Therefore, the hypothetical-deductive approach method will be adopted, based on the hypotheses that will be raised throughout the research. Afterwards, the hypotheses will be taken to the confrontation with the facts, and with the analysis of some current jurisprudence that deals with artificial intelligence and personality rights.

## 2. THE CONSUMER AS A VULNERABLE GROUP

The consumer is considered as a vulnerable group due its need of protection towards the large companies and mercantile conglomerates. The Consumer Defense Code brings the concepts of hypo-sufficiency and vulnerability, this way the person is protected in cases where the consumer relationship is characterized.

Initially, minorities and vulnerable groups should be conceptualized and differentiated;

Vulnerable groups: there is no identity, a common trait between individuals as a factor that attracts them; they are groups composed by society in general. For example, consumers, litigants, unions, the disabled, the criminal accused. It is understood that they are individuals susceptible to being hurt, offended or attacked. (SENGUIN, 2017)

The minority would be a sort of vulnerable group, subdivided into several others, such as ethnic, racial, religious, sexual, forestry, handicapped, women, children, among others. (PEREIRA SIQUEIRA, CASTRO, 2017)

There are some elements that are common when conceptualizing “minorities”, such as: the fact that it is considerable or a high numerical group; as well as the existence of a non-dominant’s position, and a subjective bond of solidarity among its members. Minorities exercise a influence position in society because they are part of an expressive numerical group despite being called “minorities”. (BRANDI CAMARGO, 2013, p.49)

Minorities are characterized as groups of non-dominance or disadvantage in relation to other groups and may receive discriminatory treatment by the majority. (CHAVES, 1970, p. 149-168)

They also feature the organization of social movements in order to participating in government political decisions. Vulnerable groups, on the other hand, articulate social acceptance. Thus, the actions developed by vulnerable groups are set without a second plan, lacking state protection. (BRANDI CAMARGO, 2013, p.49)

The 1988 Constitutional System is an open list of fundamental rights, this derives from the axiological normative principle of the dignity of the human person. The concept of these rights enshrined in art. 5 points to the existence of positive rights in other parts of the constitutional charter and also in international treaties. (SARLET, 2012, p. 69-71)

The Constitutional text considered solidarity, citizenship, the dignity of the human person, the political pluralism and social values of work and free initiative as the foundations of the Federative Republic of Brazil. Thus, the fundamental principle of citizenship and the dignity of the human person must be analyzed according to the project of society, the State and the Law, which the Federal Constitution sought to consolidate, bringing the positivation of several fundamental rights not only in its Article 5, but also throughout the Constitution. (COPETTI SANTOS, 2013)

Consequently, the fundamental principles described above have their meaning built from an amplification of the constitutional axiological complexity, composing a democratic framework of law that unites several fundamental rights and protects minorities and vulnerable groups.

There are mechanisms in the Federal Constitution to instrumentalize a pluralist society. It is seen that art. 3, inc. IV, provides that the fundamental goals of the Federative Republic of Brazil are to promote the good of all, without prejudice of origin, race, sex, color, age and other forms of discrimination. Thus, the Federal Constitution provides for various forms of protection for minorities and vulnerable groups, and in the case of this work, consumer protection.

With the promulgation of the Federal Constitution, the minorities’ demands were established in the constitutional text, culminating in several infraconstitutional norms so that “they could receive such a historical political movement and materialize, in a more effective and analytical way, the guardianship to more particularized and less universal social goods. (COPETTI SANTOS, 2013)

Some legal predictions on consumer protection in the Federal Constitution are brought to the understanding of this work. Article 5, inc. XXXII foresees the obligation of the State in the defense of the Consumer, as well as the responsibility of the Union, the States and the Federal District to legislate, concurrently, on consumers right. Art. 150 foresees measures for the con-

sumers to be enlightened about the taxes that are applied on goods and services. Finally, art. 170 concerns the economic order, observing the principle of consumer protection.

One of the principles that regulate the Consumer Defense Code is the principle of protection and necessity: "Article 1 This code establishes norms of protection and defense of the consumer, of public order and social interest, under the terms of articles 5, item XXXII, 170, item V of the Federal Constitution and article 48 of its Transitional Provisions". There is also provision for consumer vulnerability, as provided for in art. 4, inc. I of the CDC.

What justifies the existence of this law is the need for consumer protection when purchasing products and services, in which it requires State intervention in front of the scope of the market. The State must intervene as a way of protecting the consumers, so that they aren't harmed and has their individual rights and guarantees respected. (NUNES, 2013, p. 177)

Cláudia Lima Marques says that the Consumer Defense Code's system harmonizes with postmodernity, as it seeks to give effectiveness to human rights, such as the rights of the different, the weakest and the consumer in the current market. (MARQUES, 2010)

Being vulnerable means being subject to or in danger of being damaged. The basic State has the policy of protecting the vulnerable, and it is accepted by all of society. Therefore, the protection of vulnerability is inspired by the principle of justice.

Vulnerability can be divided into two approaches: the first is related to the basic vulnerability that is intrinsic to the human being and the second are those circumstantial vulnerabilities. This second form is also called derived vulnerability, and it is configured as a state of predisposition to suffer more damage. The derivative or secondary type will have specified causes, and the vulnerable subjects must be tutored, in which the State promotes forms to remove what leave them unprotected. (KOTTOW, 2013, p.74-75)

The sense of acquired vulnerability is that the individual has increased susceptibility to harm. Individuals will be vulnerable when they do not possess what is fundamental to them, having rights reduced, suffering from unmet needs, making them fragile and predisposed to suffer damages. The resulting vulnerability is susceptible to negative actions that are carried out by the strongest, causing damage by inattention, negligence and malice, which destines the vulnerable to suffer the damage, requiring more discussion about the state in which the subject is. (KOTTOW, 2013, p.35)

Due to their vulnerability in the consumer market, the consumer needs greater State's protection. The natural person who buys products and services is in a fragile situation in economic, technical and several other aspects. The person's fragility is analyzed through the nature of the activity in which they acquire their product or service, and not their own characteristics. (BESSA, 2009, p. 35)

The consumer is the fragile part in the various legal relationships established in the consumer market. This way, the consumer needs differentiated treatment in the relationships that are established with the supplier, as a way to densify the principle of isonomy, foreseen on the Federal Constitution. The consumer was the only economic agent to be included in the list of fundamental rights in Article 5 of the Federal Constitution, and this is part of the implementation of the constitutional principle of equality, of unequal treatment to unequal ones, which

aims at material and momentary equality for a subject with different rights, the vulnerable and weakest one, which is the consumer. (MARQUES, 2010, p.384)

Consumer protection is provided for in art. 5 of the Federal Constitution, inc. XXXII, in the general principles of economic activity, art. 179, inc. V, and in art. 48 of the Transitory Constitutional Provisions. This defense has been elevated to an eminent position of fundamental right, and is attributed to it as a structural principle of the legal order. The protection that is given to the consumer by the legal order should be studied as part of a broader tutelage, which is that of the human personality.

The vulnerability and fragility of the consumer in the market are the purpose of the CDC's existence, it can be affirmed that vulnerability is the starting point of any general theory of consumer law, and it is much greater than just the reflection of inequality that there is between consumer and supplier, as it encompasses other countless aspects, such as the lack of information about what one buys, the maneuvers of entrepreneurs to fraud the competition, the use of abusive marketing, among others. (BESSA, 2009, p. 42)

Therefore, when analyzing a case that discusses the application or not of the CDC, one must evaluate the vulnerability of the said consumer under five different approaches, which are: the factual, technical, legal, informational and psychic vulnerability. And these aspects should serve as criteria for solving the hard cases on the incidence of consumer law.

The concept of what the consumer is, should be used for issues involving civil liability for the product or service provided addiction, and for disregarding the legal personality. Other subjects that are related to the civil law are ruled by the concepts of consumer and its equivalents, in which the activity of the consumer market stands out much more than the subject damaged by the activity.

Leonardo Roscoe Bessa explains that one of the problems of fitting some difficult cases in the concept of consumer is that very often the art. 29<sup>3</sup> of CDC is ignored, which in turn brings the concept of equivalent consumer. (BESSA, 2009, p. 58)

Another point that makes it difficult to frame the CDC in difficult cases is the division of the law, in which the matters discussed are divided by topics, without internal dialogue, since the law provided for is linked to the principles guidelines of articles 4 and 6.

Thus, the division of the law by topic does not mean that there is thematic division. In order to have a fair understanding, it is necessary to analyze the articles disposed by the own law under different concepts of what is consumer. So, the recommendation to be made is to use a hermeneutic guideline: the subject's vulnerability for the difficult cases. (BESSA, 2009, p. 59)

In difficult cases the vulnerability of the consumer must be analyzed in the specific case, in order to reach the conclusion that the CDC should or shouldn't be applied

In these cases the theory of in-depth finalism applies, Cláudia Lima Marques says that "the more solid and in-depth the finalist interpretation, the more important will be the application of legal equations and the notion of vulnerability. (MARQUES, 2010, p.353)

3 Art. 29 For the purposes of this Chapter and the following, all persons, determinable or not, exposed to the practices set forth in it, shall be treated as consumers.

The Federal Constitution, by providing on the principle of human dignity and personality rights, also ends up protecting the consumer, who is a person, and is exposed to the consumer market.

The CDC begins to guard with greater caution the subject's existential and patrimonial interests, in view of the activities that are developed in the market. If the caput of art. 4 of the CDC provides for the service to consumers, respecting their dignity, health, etc., and art. 6 reinforces the duty of the State to protect the life, health, and safety of the consumer, it is clear that this refers to the general clause provided in the Federal Constitution to protect the dignity of the human person. (BESSA, 2009, p. 60-61)

The use of various technologies on the market, such as the use of social networks, applications for editing images and videos, voice recognition, and data storage has as its main purpose the provision of services, and must have its relationship protected by the Consumer Defense code.

The interpretation of consumer law should not be done in a philological or literal way, so that it reduces to the quality of a product or service everything that is related to consumption relationship. This is not the purpose of the law. Its purpose is to protect the consumer who is the hyposufficient and vulnerable part of the relationship. Cláudia Lima Marques says that the concept of final recipient is interpreted in accordance with the theory of in-depth finalism, and the CDC should be applied in the cases mentioned above. (MARQUES, 2006)

The Consumer Defense Code was born to protect the one in a situation of inequality towards the supplier of products or services, the vulnerable. Given the above, it can be said that Internet users, social networks and other applications are vulnerable, also being characterized as consumers. Thus, it is understood that the Consumer Defense Code should be applied to relationships involving users of applications and software, blogs, websites, and the like, given the vulnerability they find themselves in. It should be emphasized that even with the existing laws about the Internet, such as law 12.965/2014 and law 13.709/2018, if they aren't enough to protect the user, the Consumer Defense Code should be used as an effective way to protect those people.

### 3. ARTIFICIAL INTELLIGENCE

Artificial intelligence (AI) is present in the everyday life of any society, and began to be developed in 1950 at Dartmouth Summer Research Project on Artificial Intelligence at Dartmouth College, Hanover, New Hampshire, USA. (SILVA, 2019, p. 13)

In the 20th century artificial intelligence received more attention by researchers, in which Alan Turing began research to establish a computational intelligence. In 1950 the author published his article dealing with the "imitation game". In this work, Turing proposes a game based on divination, analyzing if such premise could be applied to computers. In his article the author researched the nature of thought and verified whether machines are capable of gathering knowledge. (TURING, 1950, p. 433-460)

The test consists of questions and answers, in which an interrogator (human) asks the questions to two hidden entities. One is a computer and the other a human being. The communication between the players is performed indirectly, and the interrogator cannot directly see who the entities are. Through the answers obtained, the interrogator will try to find out which of them is human. (TURING, 1950, p. 433-460) In 2012 a computational engineer was able to prove the Turing test by convincing the judges of a game that artificial intelligence was human<sup>4</sup>.

Artificial intelligence manipulates and stores data, but it also performs other functions that need more knowledge and deepening. The treatment of the data obtained includes the aptitude for “new knowledge or relationships about facts and concepts from the existing knowledge and use methods of representation and manipulation to solve complex problems”. (SILVA, 2019)

The AI helps the human being in the execution of countless daily activities, besides allowing the optimization and acceleration of daily tasks. Thus, it can be conceptualized as follows:

[...] is the set of logical routines that, applied in the field of computer science, allows computers to dispense with the need for human supervision in decision making and interpretation of analog and digital messages. This is possible given the system’s ability to adapt itself to human needs, through the use of data from past experiences stored in memories, making decisions with a minimum of “free will”. (TOMASEVICIUS FILHO, 2018)

Automation is not the same as artificial intelligence, despite using similar principles. However, automation does not have the capacity to adapt to new realities, not interacting with the new or the unexpected. (TOMASEVICIUS FILHO, 2018)

One of the most useful ideas that emerged from research is that facts and rules (declarative knowledge) can be represented separately from decision algorithms (procedural knowledge), having a profound effect both on how scientists approached problems and on engineering techniques to produce intelligent systems. By adopting a particular procedure or the inference machine, the development of an artificial intelligence system is reduced to obtaining and coding rules and facts that are sufficient for a certain domain of the problem, whose process is called knowledge engineering. (SILVA, 2019,p.15)

While the computers were not linked by the Internet, each of the machines had limited processing capacity, according to the memory contained in the device. However, with the improvement of computer programs, applications and software, the capacity of data processing and artificial intelligence work has gained new horizons. (TOMASEVICIUS FILHO, 2018)

AI goes beyond the technology’s concept, it is translated into the structural means of communication of today’s society. This cyber intelligence is present in social relations, jobs, leisure, communication and relationships. In this way, it can be affirmed that society has become a network. (AZEVEDO, 2015)

Patrícia Peck Pinheiro explains that digital law was born from the evolution of law itself, here it covers fundamental principles and inserts new institutes in other branches of law, such as civil law, copyright, business, commercial law, among others. (PINHEIRO, 2014, p.56)

4 TERRA. 26.set.2012. Available at <https://www.terra.com.br/noticias/tecnologia/robos/robo-confunde-humanos-e-passa-no-teste-de-turing-pela-1-vez,95188947c52ea310VgnCLD200000bbcceb0aRCRD.html>. Access in: 05 maio 2020

It is important to remember that there is currently a certain technological dependence that affects the whole society, from small companies to governments and large institutions. Consequently, business relationships migrate to the Internet, which can generate risks to those involved in relation to the security of the transaction that is carried out

In this picture, the possibility of visibility of the current world also brings the risks inherent to accessibility, such as information security, unfair competition, plagiarism, sabotage by hacker, among others. Thus, at the same speed of the network's evolution, due to the relative anonymity provided by the Internet, there is an increase in crimes, complaints due to violations of the Consumer Defense Code, infringements to intellectual property, trademarks and patents, among others. (PINHEIRO, 2014, p.56)

Hence, it can be affirmed that artificial intelligence is constantly expanding, both in its initial concept and in its processing and knowledge capacity. In short, the engineering of artificial knowledge depends on the analysis of facts and rules, in order to create a pattern and consequently an intelligent system.

### 3.1 ALGORITHMS AND ANALYTICAL INTELLIGENCE

There are several forms of intelligence known as artificials and one of them is analytical intelligence that performs analysis of previously captured data and then elaborates a report transforming this data into standardized information.

Based on this captured data and standardized information this intelligence is able to use this information to return to the user, for example, advertisements for products and services that this user has previously shown interest in. "Analytical intelligence directs mental processes to problem solving and decision making".(MIRANDA, 2012)

Algorithms are used as a means of controlling human behavior in relation to the Internet. Thus, dealing with artificial intelligence is not only analyzing its basic concepts but also analyzing the premises of predictive intelligence analytical algorithms and data analysis and control. Wolfgang states that algorithms can contribute to the control of behavior by the law, complement the law or even contradict it.

It is noteworthy that in digital communication the use of algorithms is essential:

For use in computers, the algorithms are written in a digital language, mechanically processable, and the task given respectively is executed by means of a finite and predefined number of individual stages. typical is the deterministic structure of programming. In general, which is also the case in the examples dealt with in this article, specific algorithms are parts of complex digital algorithm systems. Furthermore, the algorithm concept is often used as a synonym for the computer program used in the whole. (HOFFMANN-RIEM, 2019)

The system used through algorithms can be programmable to adapt autonomously to new problems and solve complex conflicts. And so this capability does not necessarily need to be programmed, but can be the result of computational learning through training based on the evaluation of experiences obtained through examples or even through data feed. "[...]Currently, we are working intensively to get these subjects to continue writing their own programs and be able to develop independently of human programming. (HOFFMANN-RIEM, 2019)



The algorithms modify the perception of the world and also act on social behavior influencing society in decision making, being thus an important source in the social order. To use data and expand its possibilities by artificial intelligence it is necessary to perform the analysis of data previously connected.

Several analytical procedures are performed and each one has a purpose. The first is the descriptive analysis that is used from data mining through study, in which the material is classified and prepared for evaluation.

Afterwards there is the predictive analysis that learns from previous experiences about the behavior of its users and recognizes trends and behavioral patterns. (HOFFMANN-RIEM, 2019)

In this aspect predictive analysis is able to predict future behaviors of consumers (on shopping sites and, also, on mobile application). This analysis aims to recommend behaviors to apply the knowledge collected descriptively and the predictive knowledge to achieve certain objectives.

#### 4. APPLIED LEGISLATION

The “civil rights framework for the internet” (Law 12.965/2014)<sup>5</sup>, brings in its Article 5, item I the following definition:

Art. 5 I - Internet: the system consisting of a set of logical protocols, structured on a world-wide scale for public and unrestricted use, with the purpose of enabling data communication between terminals through different networks;

Therefore, it can be highlighted that the inappropriate use of the Internet can bring negative consequences for the whole society. Lawrence Lessig teaches that software codes can be compared to laws, as these codes have certain rules so that the user can access, for example, the insertion of a personal password to log in the application. Both the law and the software programming are “structures designed to control behavior. (PINHEIRO, 2014)

Today, the data disclosed on the Internet and the speed of its propagation allows companies to advertise their brands, products, services, among others, creating thus a virtual market that grows annually. (GASPARATTO, FREITAS, EFING,

The General Data Protection Law provides in its Article 2 for the protection of sensitive personal data, and is based on respect for privacy, inviolability of intimacy, honor and image, human rights, free development of personality, dignity and the exercise of citizenship by natural persons, among others provided for in the aforementioned article.<sup>6</sup>

5 BRAZIL. Law No. Lei 12.965 of 23 April 2014. Marco Civil da Internet. Available at << [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2014/lei/l12965.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm) >> Access in 30.abr.2020.

6 Art. 2 The discipline of personal data protection has as foundations:

I - the respect for privacy;

II - informative self-determination;

III - freedom of expression, information, communication and opinion;

IV - the inviolability of intimacy, honor and image;

V - economic and technological development and innovation;

VI - free enterprise, free competition and consumer protection; and

VII - human rights, free development of personality, dignity and the exercise of citizenship by natural persons

In Article 5 of the aforementioned law, there is a classification of the data, in which personal information is related to an identified or identifiable natural person. In relation to sensitive personal data, there are personal elements about racial or ethnic origin, religious conviction, political opinion, union membership or religious, philosophical or political organization, concerning health or sexual life, genetic or biometric information, when linked to a natural person, besides other existing classifications.<sup>7</sup>

Article 5 of the General Data Protection law is similar to Article 9 of the General Data Protection Regulation (RGPD) which also provides for the right to genetic data, data relating to health, or data relating to a person's sexual life or sexual orientation. (FERREIRA, [et all...], 2018)

The Internet usage, as a means of social and electronic communication, must obey the principles foreseen in art. 221 of the Federal Constitution, such as the preference for educational, cultural and informative purposes, promote the national and regional culture, stimulate the independent production that aims at its disclosure, and respect the ethical and social values of the person and family. (FIORILLO, 2015, p.16)

The aspects of protection of personality rights in relation to artificial intelligence are: The right to personal data; such as the right to be forgotten; the right to portable data, data protection and the right to access data. (KAUFFMAN, NEGRI, 2020)

Therefore, the legislation that can be applied in relation to the protection of personality rights when violated by artificial intelligence, are numerous. Besides the Civil Framework of the Internet (Law 12.965/2014), and the General Law of Data Protection (Law 13.709/2018), there is the Consumer Defense Code, which has means for the protection of the user of sites and applications present in the world net of computers, as the possibility to hold responsible for the supplier of services or products when addiction occurs

Note that art. 4, item I provides for the recognition of consumer vulnerability, raising this recognition to a principle that should be respected in consumer law<sup>8</sup>. Thus, it is clear that the Consumer Defense Code can be invoked when analyzing these issues, in view of the consumer's vulnerability, and also the great possibility of being deceived, or even receive misleading and/or abusive advertising. Article 6, inc. V of the CDC also provides for the possibility of modifying contractual terms that establish disproportionate benefits or their revision due to supervening facts that make them excessively onerous.

The Civil Code also brings mechanisms for analyzing contracts that are not signed in person, which may culminate in contract revision actions, or even contract rescission actions, in addition to the protection of personality rights when the holder is injured, the possibility of action for moral and/or material damages (articles 186 and 927 of law 10.406/2002). The

7 Art. 5 For the purposes of this Law, it is considered:

I - personal data: information related to an identified or identifiable natural person;

II - sensitive personal data: personal data on racial or ethnic origin, religious conviction, political opinion, union membership or organization of religious, philosophical or political character, data related to health or sexual life, genetic or biometric data, when linked to a natural person;

III - anonymized data: data related to the holder that cannot be identified, considering the use of reasonable and available technical means at the time of its treatment;

IV - database: structured set of personal data, established in one or several locations, in electronic or physical support

8 The National Policy of Consumer Relations aims to meet the needs of consumers, respect their dignity, health and safety, the protection of their economic interests, the improvement of their quality of life, as well as the transparency and harmony of consumer relations, meeting the following principles: I - recognition of consumer vulnerability in the consumer market;

General Data Protection Law will bring greater security to the users of the world wide web, consequently protecting sensitive data and personal rights.

## 5. THE VIOLATION OF PERSONALITY RIGHTS

The personality's rights can be violated, injured, mitigated as a result of the misuse of artificial intelligence, the applications available free of charge on the Internet, the various social networks that offer the most varied types of services such as dating, photo sharing, videos, emojis, memes, games among friends, and others.

The rights that are constantly violated and are exposed to all kinds of misuse by third party are the rights to honor, privacy, intimacy, to the rights of freedom (of thought, expression, religious, among others), image, voice, life and physical integrity, copyright, among others.

The human being is in a situation of vulnerability in relation to artificial intelligence, given the immense data processing capacity it has, and the inadequate use of social networks by users.

One can even, from a rhetorical point of view, ask whether artificial intelligence and personality rights represent a contradiction in terms, such is the vulnerability of the person due to the inadequate use of these technologies. (TOMASEVICIUS FILHO, 2018)

Users are increasingly induced to acquire new applications that make life easier, or that can bring moments of pleasure, such as games, applications that connect to other devices (internet of things), specific social networks for relationships, friendships, search for employment, sharing books and music, among others.

This induction is achieved by feeding the AI in which the user himself reveals his interests when performing his daily searches, or even by the pages he usually visits and the navigation time on each page. For example, Google runs a free course on ads, explaining to the interested person how important it is to measure the time a potential customer stays on your page, which item that customer clicks on, which other pages the customer browses at the same time, price comparison, etc,

Regarding data analysis of the right to privacy and the protection of personal data, there is a scarcity of studies, as we live in the era in which users of social networks are induced or seduced to exhibitionism, renouncing their freedom, intimacy and privacy, providing personal data in exchange for some free services such as social networks. (BOFF, FORTES, 2018)

As an example of personality rights violation resulting from the use of AI is the case where a company made available the marketing of a game called "Bolsomito2k18", which violated the rights of minorities and vulnerable groups, in addition to violating the rights of the President of the Republic himself.<sup>9</sup>

<sup>9</sup> Electronic game and personality rights. Judgement Date: 02/06/2019. Publication Date: 02/08/2019 Court or Court: 14th Civil Court of Brasília - DF Type of Appeal/Action: Sentence  
Case Number (Original/CNJ): 0735711-26.2018.8.07.0001 and 0722305-38.2018.8.07.0000  
Name of rapporteur or Judge (case sentencing): Judge Luis Carlos de MirandaCâmara/Turma: -Articles of MCI mentioned: Article 15 Menu: "The Public Prosecution Service of the Federal District and Territories has filed a public civil action against VALVE CORPORATION LLC, in which it pleads, in close synthesis, for the condemnation of the defendant: (a) the obligation to

Another emblematic and much discussed case was that of the subway stations in the State of São Paulo and the use of users' biometric data, without their prior consent, which violates the right to image. In the case in question, the captured image was considered personal data, being then protected by the inviolability of intimacy. Another point discussed in the case file was the lack of information to the consumer that their data would be captured and what their destination was:

[...] in view of the economic exploitation of the collected data, says that violated the right to image, [...] the technique already allows the identification of the person from the capture of facial elements of emotion, from the so-called anchorage points, and that there is no way to ensure what technology is used by the defendant. It maintains that facial expression should be considered personal data, protected by the inviolability of intimacy, and invokes an administrative decision, in an identical case, taken in the Netherlands [...] the indiscriminate collection of data on the facial expressions of adults and children violates the rights of children and adolescents, especially privacy, marked by the hypervulnerability of its holder. [...] the data collection takes place in a practically camouflaged way, without at least clear and express notice to the consumer that it is being filmed and that its image will be used for commercial purposes. [...]"<sup>10</sup>

The deterioration regarding personality rights is intertwined with the use of wearable technologies and the inadequate treatment of the information obtained by them.

It should be noted that the user's right to request his information, the protection of his data, and the portable data only exists because of the concern that they may be used inappropriately, or even against the user himself.

According to Kauffman and Negri, one of the challenges of wearable technologies is to identify who owns the user's data, such as the manufacturer, the software developer, the infrastructure provider or even the data analysis company. It is important to stress that the user has the right to all this data, because it comes from its use, its sensitive data, among others. The difficulty will be in identifying who is in effective possession of this data for legal purposes (KAUFFMAN, NEGRI, 2018).

An example to be mentioned is the case of the UBER Software System that has personal data of its users (drivers and passengers). In this case, the UBER Software System was consid-

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abstain from the commercialization of the electronic game "Bolsomito 2k18"; (b) the obligation to provide all registration and financial data of the developer of the application "BS Studios".

The author argued, in brief summary: (i) that the game in question violates the right of the personality President-elect of the Federative Republic of Brazil, thus generating rebound damage to all Brazilians and exposing the country negatively on the international scenario; (ii) that the game violates the right of the personality of women, LGBTs, blacks, members of social movements, federal and state congressmen and promotes hatred towards minorities.

The author also formulated an urgent request for tutelage for the requested party: (a) suspend the commercialization of the Bolsomito 2k18 game; (b) provide all registration and financial data of the person responsible for creating the Bolsomito 2k18 game.

As narrated by Parquet in ID n. 28431458, the loss of the object of this action occurred, since "according to information from Valve Corporation (ID 28106284), the game "Bolsomito" is no longer commercialized by Steam at the request of the developer himself (BS Studios). Moreover, Valve Corporation informed the registration data of the responsible for creating the game. The procedural interest remains consubstantiated on the utility or on the necessity of the jurisdictional provision, and, in relation to the latter, must be examined in concrete".

10 BRASIL. TJSP. Tribunal ou Vara: 37ª Vara Cível Central - São Paulo - SP. Tipo de recurso/Ação: Antecipação de tutela. Número do Processo (Original/CNJ): 1090663-42.2018.8.26.0100. Nome do relator ou Juiz (caso sentença): Juíza Patrícia Martins Conceição. Data do Julgamento:14/09/2018. Data da Publicação: 18/09/2018

ered the owner of the passenger's personal data, being then obliged to pass it on to the driver for legal purposes, as can be extracted from the decision below:

[...] Claims the author that he went to "quadra 201 norte" to pick up a passenger, when he was rudely received, refusing to transport the requester. In reaction, the said passenger would have damaged his vehicle. Therefore, he wants the data of such person to take the appropriate measures. In the case at hand, I have that it is true the reason that motivated the authorial request, behold, there was apparently an illicit act by the passenger, to be eventually ascertained. Thus, I understand that the acceptance of the authorial request is justified, precisely as a full exercise of the contractual good faith [...] GRANTED the authorial request to determine the defendant company to provide the author with the registration data of the user who requested the trip in question [...].<sup>11</sup>

Artificial intelligence plays an important role in the life of modern man, since technologies and devices that use artificial intelligence are essential for everyday life. As an example, Smartwatch can be mentioned, which receives all information from the subject's cell phone, besides monitoring the steps, heart rate, the frequency with which this person exercises, among others. The various artificial intelligence devices that are provided to users today make life easier and optimize time. On the other hand, these technologies store countless user data, and until then, there has been no effective control over the use of this information.

There is a growing use of wearable technologies. Data from 2019 shows that the use of these devices was 722 million users. The forecast for 2022 is that it will exceed 1 billion users:

The number of connected wearable devices worldwide has more than doubled in the space of three years, increasing from 325 million in 2016 to 722 million in 2019. The number of devices is forecast to reach more than one billion by 2022.<sup>12</sup>

In the medical field there is already talk of technologies that are capable of monitoring all physical and/or mental activity of the patient so that the doctor can readjust a treatment or even withdraw the daily use of medicines that have not proven effective

A new generation of wearable sensors enables physicians to capture long-term-patients' activity levels and exercise compliance, facilitating effective dispensing of medications for chronic patients and provide tools to assess their ability to perform specific motor activities, and propose rehabilitation solutions.<sup>13</sup>

Media Math, Interberry Group and Gartner conducted research in 2017 analyzing how marketing companies will carry out their campaigns for the future, and in this research it can be seen that 36.9% of professionals increased their investments in marketing and advertising through the study of data captured<sup>14</sup>

11 BRASIL. TJDF. Tribunal ou Vara: 4º Juizado Especial Cível de Brasília – DF. Tipo de recurso/Ação: Sentença. Número do Processo (Original/CNJ): 0744419-20.2018.8.07.0016.Data do Julgamento: 04/12/2018. Data da Publicação: 10.dez.2018. Juíza Simone Garcia

12 STATISTA. Available at <https://www.statista.com/statistics/487291/global-connected-wearable-devices/> Access in 05.mai.2020

13 DOMB., Menachem. Wearable Devices and their Implementation in Various Domains. Available at <https://www.intechopen.com/books/wearable-devices-the-big-wave-of-innovation/wearable-devices-and-their-implementation-in-various-domains> Access in 13.abr.2020

14 GDMA. Winterberry Group. Análise Global de Marketing e Publicidade Orientados por Dados de 2017 O cenário no Brasil. Available at <<[https://info.mediamath.com/rs/824-LSO-662/images/GDMA\\_2017\\_PORT.pdf?aliid=eyJpljo iUytURWdPd001cmtOK085aSlslnQIOiJaMnIBYjtdWxDMVIMOEdjWnM5WnZRPT0ifQ%253D%253D](https://info.mediamath.com/rs/824-LSO-662/images/GDMA_2017_PORT.pdf?aliid=eyJpljo iUytURWdPd001cmtOK085aSlslnQIOiJaMnIBYjtdWxDMVIMOEdjWnM5WnZRPT0ifQ%253D%253D)>> Acesso 05.mai.2020

Obviously, companies use the personal data of their users to direct advertising and propaganda. However, the use of this data cannot be excessive, or even abusive to the user.

In order to reduce the attrition of personality rights in the face of technological innovations, Kauffman and Negri argue that “new technologies and innovations should be integral components of the legal system in the future”. (KAUFFMAN, NEGRI, 2018)

Therefore, the rights of the personality must be protected by the legislation, so that the user of the digital platforms does not have his data violated or misused. The protection of personal data is possible, however still unknown to the population.

## 6. CONCLUSION

Vulnerable groups are made up of the various minorities that need protection and representation in the country. Among these minorities are consumers who use artificial intelligence through social networks, applications, software, websites, among other devices available on the world wide web. The Consumer can be considered vulnerable, as provided in art.4, inc. I of the Consumer Defense Code, in which the presumption of vulnerability results from the absence of specific knowledge about the violation of their personal data, their consumption behavior, their lack of knowledge when entering their personal data into internet applications. There is a culture of excessive exposure on social networks in exchange for free access to applications. However, what several users do not know is that they are having their sensitive data available to them in order to have access to these platforms.

Artificial intelligence is broad and grows exponentially, always evolving and adapting to social changes. This means that, although AI does not yet have the capacity for autonomous creation, in the future this may happen.

It should be noted that artificial intelligence is already used to monitor the patient’s heart, to access the symptoms of sick people, to analyze the face through biometrics, to suggest places to visit based on cell displacement data, among others. Although AI is extremely useful for day-to-day activities, it can become a mean to monitoring personal acts.

In relation to consumption patterns, personal data are collected and later sold to companies that are dedicated to selling the products that the consumer is already interested in purchasing. This way, the artificial intelligence has the ability to predict which will be the next purchase of the user. It stands out for the cases in which the person receives numerous advertisements in his e-mail, social networks etc. about a specific product.

It is suggested that there is greater awareness of the population when using new technologies and new devices that use artificial intelligence, in addition to better monitoring of the use of this data, today it is not possible to quantify what data and how far each platform can interfere in the user’s life

Not all data inserted by the user in virtual platforms should be used to convert into advertising or information aimed at him, because the person is entitled to his privacy and intimacy. When a person is performing an internet search, he or she does not expect that this will be

stored in a database and that it will be used later. There is a violation of basic personality rights, such as intimacy and privacy, and in some cases, the violation of the right to voice, image and honor.

Consequently, with the abusive use of personal data for ads, the user can find himself in a system of extreme monitoring and follow-up of all his personal acts on the Internet, not feeling safe or comfortable when performing a transaction, or even when making calls by applications or exchanging information between colleagues.

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