Questionnaire B:

Influencers, native advertising and the use of AI for marketing - how can it be controlled by law?

When shopping in the internet, consumers have access to a bigger range of products and an enormous market of potential contract partners. However, by using search engines, the search engine and not the user decides what products are proposed to the consumer. The proposals often come about through artificial intelligence and do not have to correspond to the interests of the user. Is this a problematic restriction of the customer's contractual freedom, as he cannot understand the search engine's logic?[1]

How do chatbots have to be designed to allow a lawful processing of data according to Art. 6 (1) lit. b GDPR?[2]

Does the use of "artificial intelligence for processing personal data to control the interaction with the affected person" require a (possibly cost-intensive) data protection impact assessment pursuant to Art. 35 (1) GDPR?[3]

Can the processing of data be lawful according to Art. 6 (1) lit. f GDPR if an AI-software is combined with the tracking of cookies for the purpose of individualized advertising?[4]

Is the instrument of informed consent to data processing (Art. 6 (1) GDPR) sufficient to protect the consumer? Anyone who spends a lot of time on the Internet can hardly afford to read the numerous data protection regulations that apply to advertising, prices, etc. Data protection declarations are often extensive and difficult to understand.

Is the tie-in ban under Art. 7 (4) GDPR respected by companies? Can consumers use a website without consenting to the use of their personal data?

Does the creation of personalised advertising or personalised prices fall under Art. 22 (1) GDPR?

How can transparency be created for consumers if the website operator often does not know what data is collected from third parties on his website?

Is the so-called black box phenomenon (developers & users cannot understand the decision making processes of the artificial intelligence) compatible with the transparency principle of the GDPR?[5]

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[1] Grapentin, NJW 2019, 181 (182).
[2] Gausling, ZD 2019, 335 (336).
[3] Grausling, ZD 2019, 335 (337).
[4] Gausling, ZD 2019, 335 (339).
[5] Grausling, ZD 2019, 335 (336).

In addition to the existing data protection requirements, are legal instruments needed which restrict the collection and use of data for the personalisation of content/advertising/prices?

Is it necessary to improve the transparency of algorithms for customers and e.g. inform about the specific amount of personal data which will be used by the algorithm?

Decisions about personalised advertising/content/prices are made by algorithms based on the customer's existing data sets. How can the data quality of the underlying data sets be ensured for the creation of personalised advertising/content/prices?

How can the data protection of personal data be guaranteed when artificial intelligence develops independently and interacts with other algorithms?

Must there be national restrictions on creation of user profiles which currently also use data from international third party sources?[6]

Algorithms often flexibly set prices of products in the internet. If different companies are using the same or similar algorithms to set their prices, it might lead to intentional or unintentional price collusion. Should there be a stricter regulation of certain forms of algorithms that enable a collusion?[7]

Is the collision of algorithms (deliberate use of algorithms to coordinate the behavior of the entrepreneur involved) to achieve higher prices legitimate?[8]

Can the use of price algorithms promote the stability of cartels through better possibilities of supervision and assembly?[9]

Is it necessary to develop consumer-friendly algorithms that will help consumer at comparing prices and predicting the future development of a product's price?[10]

Should companies be required to disclose the functionality of their algorithms to make the process of price setting more transparent?[11]

Should personalised prices not be used in certain areas of life (for instance for health products, insurance and food?

How do we avoid consumer discrimination with regard to pricing?

Is it necessary to introduce a compulsory labelling requirement for personalised content/advertising/prices? Should the consumer be given a choice between personalised advertisements/prices and non-personalised ones, if required by law?

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[6] Grausling, ZD 2019, 335 (338).
[7] Bernhardt, NZkart 2019, 314.
[8] Bernhardt, NZkart 2019, 314 (315).
[9] Bernhardt, NZkart 2019, 314 (315).
[10] Bernhardt, NZkart 2019, 314.
[11] Bernhardt, NZkart 2019, 314.

Can legal requirements as well as socially and ethically recognised values be incorporated into the programming process of algorithms to prevent discrimination?

Is it legal for manufacturers to prohibit the sale of their products on certain platforms in order to protect the product's image?[12]

Is it legal for manufacturers to prohibit distributors from advertising the manufacturer's products on search engines?[13]

Algorithms often undertake important forecast decisions and the contract negotiations on the internet while the customer functions as an observer. Does this constitute a restriction of the individual/private autonomy?[14]

How can the data management of artificial intelligence be improved in order to use the large amounts of data sensibly and to enable an extended application in real time?[15]

The artificial intelligence trains itself independently until it has worked out an implementable solution for the problem entrusted to it (Machine learning). Access to global databases is currently possible. Must there be national restrictions on the interaction of different software applications to control date exchange?[16]

Do unequal competitive conditions arise when some companies operate with artificial intelligence and others do not?

How can it be evaluated that the advertisement displayed is based on the calculations of an algorithm, but does not necessarily correspond to the customer's wishes? Is the freedom of contract unacceptably manipulated?[17]

Algorithms evaluate previous purchase decisions and then place new advertisements. Does this constitute a discrimination against other companies, which were not subject to previous purchase decisions?

Will advertising campaigns, also in the creative field, be able to be carried out autonomously by artificial intelligence in the future?

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[12] Reimers/Brack/Modest, NZKart 2018, 453 (455).
[13] Reimers/Brack/Modest, NZKart 2018, 453 (455).
[14] Grapeting, NJW 2019, 181 (183).
[15] Van Achterberg, Jacco, Eine neue Werbelösung vereint künstliche Intelligenz, Internet of Things und Objektspeicher, um Automodelle automatisch zu erkennen und entsprechende Außenwerbung anzuzeigen. Ist die Zukunft der Werbung eingeleitet?, https://entwickler.de/leseproben/kuenstliche-intelligenz-werbung-579788981.html (zuletzt aufgerufen a 15.10).
[16] Grapeting, NJW 2019, 181 (184).
[17] Schaumann, Philipp, Manipulation durch Algorithmen, https://www.sicherheitskultur.at/Manipulation.htm (zuletzt abgerufen am 15.10.2019).

What tasks are open to the application of algorithms that were previously reserved exclusively for humans? (e.g. the composition of music)[18]

How does the use of personalised election campaigns affect the elections and thus democracy?

[18] Moura, Francisco, Künstliche Intelligenz komponiert Musik für die Werbung, https://www.channelpartner.de/a/kuenstliche-intelligenz-komponiert-musik-fuer-die-werbung,3336581 (zuletzt abgerufen am 15.10.2019)