



Case study: Litigating algorithms

DFF's "Litigating Algorithms" meetings in 2018 and 2019 created space for organisations, litigators, academics, and technologists to share the challenges involved in litigating against automated systems that are applied across a variety of different contexts. Beyond listening to other reflections, participants could "zoom in on transferable lessons learned that can help build stronger cases going forward."³⁴ Despite the jurisdictional differences, there was a shared sense that the similarities outweighed the differences. This applied to lessons learned, best practices, and considerations of obstacles in future litigation.

Expert tips: Share your information

To the extent possible, sharing information online about the matters you are working on may assist others in determining what routes to follow. Putting your pleadings online or sharing existing time-saving templates around repetitive actions such as data protection complaints, can support the work of others who are similarly seeking to effect positive change.

Guideline 17: Working in silos is unhelpful in the fight for positive change. Work with others, share information and resources, collaborate, and support those who are in the fight with you.

The value of hybrid participation

While the various types of litigants have their pros and cons, procedural factors such as locus standi (standing) may be determinative on these questions. Litigators are encouraged to recognise the need for representation, inclusivity, and diversity. It is important to embrace the central role of empowerment and agency in positive change. It is therefore important to be thinking creatively about combining the various forms of litigants. Hybrid participation – having different types of litigants litigating together – can create space for inclusion and empowerment, whilst ensuring protection, and providing institutional expertise and support while highlighting both individualised and systemic rights violations.

Depending on the rules of the relevant court, a decision to go in as several applicants – a combination of individuals or communities and organisations – may be one approach. Another is to consider the role of *amicus* interventions or third-party interventions.³⁵ These decisions will ultimately be determined on a case-by-case basis, but it is worth exploring the various options of litigants upfront and ensuring inclusion and participation from beginning to end.

³⁴ Reventlow, 'Litigating algorithms: taking the conversation from North America to Europe and beyond' (2019) Digital Freedom Fund (accessible <https://digitalfreedomfund.org/litigating-algorithms-taking-the-conversation-from-north-america-to-europe-and-beyond/>).