

# Digital natives wanted! The digital divide as a legal inequality issue

Centre for a Digital  
Society (EUI):  
Understanding and  
Addressing Digital  
Inequalities



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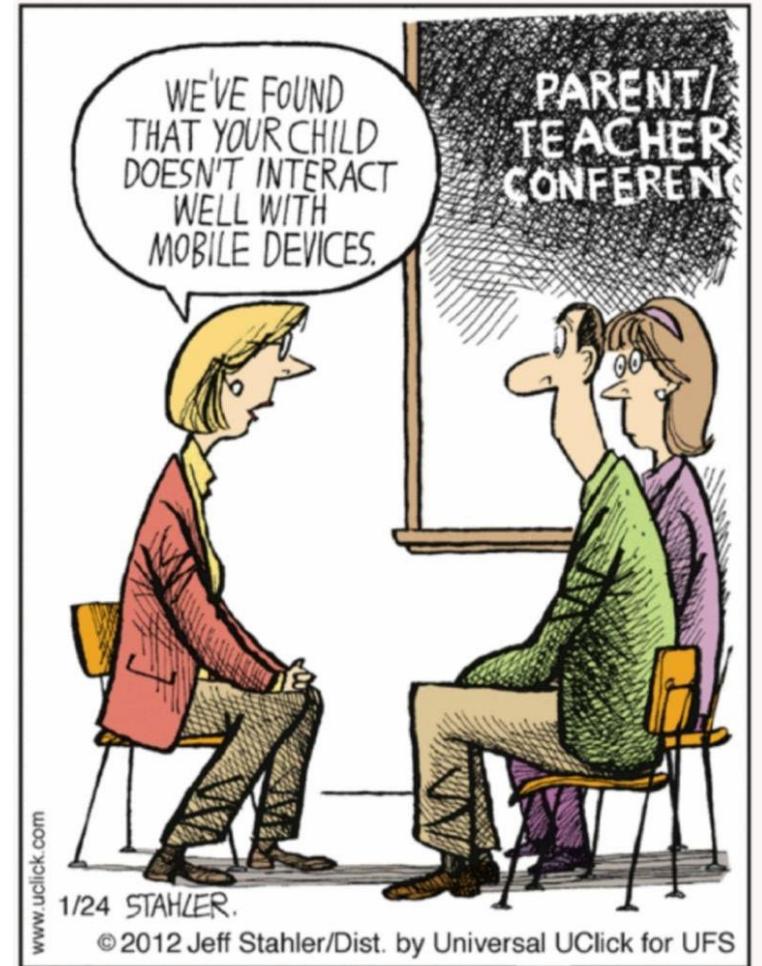


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**KU LEUVEN**

# Digital Divide in 2025: alive and kicking?

- Increasingly digitalised society
- Eurostat: “*the distinction between those who have access to the internet or other digital technologies and are able to make use of online services, and those who are excluded from these services.*”
- Two aspects:
  - **Access:** lack of access to the internet and adequate hardware
  - **Skills:** lack of skills to appropriately use the hardware and software



# Vulnerable Groups and the Digital Skills Gap

**EU Digital Decade Policy Programme (2022):  
80% of adults can use tech in everyday life by  
2030**

**36% of European adults lack basic digital  
skills (2023)**

**8% of European adults have not recently  
used the internet (2023)**

**Without further measures, only 60% of the population  
would have at-least-basic digital skills by 2030  
(the 2024 State of the Digital Decade report)**

# Vulnerable Groups and the Digital Skills Gap

Vulnerable group	% higher probability of having overall below-basic digital skills
Older individuals (55-64 and 65+)	11-13 percentage points ('pp')
Low formal education	20 pp
Lowest income quintile	8 pp
Manual occupations	30 pp/13 pp
Females	4 pp
Unemployed individuals	21 pp/5 pp
Individuals out of the labour market (home duties, retirees, long-term illnesses etc.)	6-8 pp

# The Digital Divide as a Legal Inequality Issue: personal scope of protection

- Digital discrimination occurs if the inability to use digital means is linked to a **protected ground** (personal scope) and occurs in a **covered domain** (material scope)
  - **Limited list of grounds:** race, ethnic origin, sex, religion or belief, age, sexual orientation, and disability
  - **Gap:** The EU framework does **not** capture individuals based on vulnerable socio-economic backgrounds, such as limited financial means, low education, or long-term unemployment
- (! high risk of digital exclusion)
- **Belgian anti-discrimination law** provides broader protection, including "social status" and "financial capacity"

# The Digital Divide as a Legal Inequality Issue: material scope of protection

- **Material scope:** diverging protection depending on the protected ground  
(race > sex > age/disability/religion/sexual orientation)
- **Gap:** For the key grounds of **age** and **disability**, there is no protection at the EU level in crucial areas where digital discrimination often occurs
  - provision of goods and services
  - education

# Which type of discrimination?

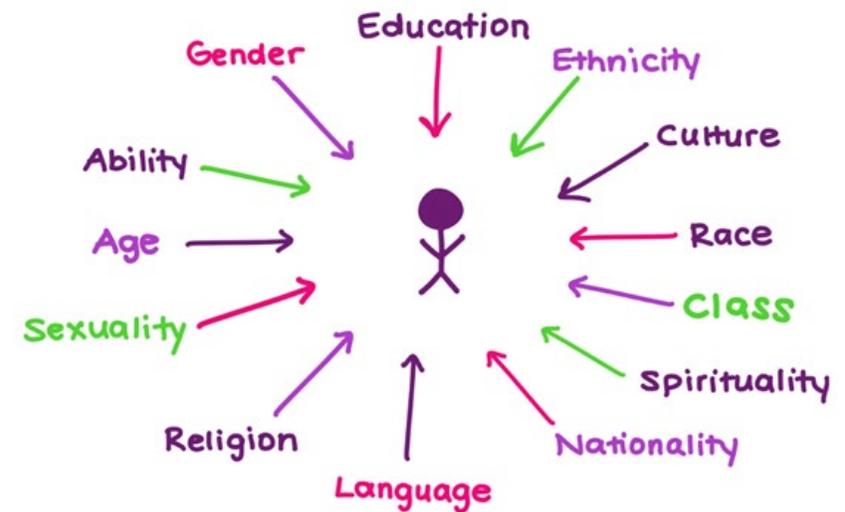
- **Indirect discrimination:**
  - Decision by authorities to (exclusively) provide services through digital means or to give certain advantages to people who use digital means = **neutral practice**  
e.g., digital discounts for tickets public transport
  - “**intrinsically liable**” to negatively affect a group with a protected ground
  - **legitimate aim** + and that the means used are **appropriate and necessary** (proportionality test)
  - Proportionality test *sensu stricto*: **sufficient non-digital alternatives** to access service/good + **importance of the service/good**

# Belgian Constitutional Court: Mandating Non-Digital Access

- Case no. 126/2025, judgment **25 September 2025**
- Appeal for annulment against a **decree concerning the digital transition of public authorities in Brussels**
- Obligation to provide an alternative for every online administrative procedure and online communication: at least contact at the office, by phone **and** by post
- Allowed authorities to take "**alternative measures**" or deviate from providing non-digital access if it constituted an "**unreasonable burden**"
- **Indirect discrimination** based on age, disability and socio-economic status?
- Court: public authorities must **always safeguard offline alternatives** for users of public services
- **Right not to use the internet**

# Beyond indirect discrimination: Intersectional discrimination

- **Intersectional discrimination:** *'a situation involving discrimination which is based on several grounds operating and interacting with each other at the same time, and which produces very specific types of discrimination.'* (Timo Makkonen)
  - e.g., elderly women (age + sex): specifically vulnerable due to accumulated disadvantages (age and previous labour market absence)



# Conclusion: bridging the Digital Gap

- Rapid digitalisation has accelerated the **digital divide**, which remains **significant** (36% of EU adults lack basic skills)
- This exclusion **disproportionately affects vulnerable groups** like older people, women, and those with low socio-economic status
- EU anti-discrimination law is **constrained by its narrow personal and material scopes**
  - Failing to protect age/disability in service provision
  - Generally failing to cover socio-economic status
- Right to not use the internet via **indirect discrimination**
- To structurally close the gap, anti-discrimination law must be combined with **proactive structural measures**: inclusive digital education for all ages + legal requirements mandating offline accessibility (public and private sector)