Surveillance Scores Secretly Penalizing Some American Consumers

Petition Urges Federal Trade Commission to Investigate and Stop Use of Surveillance Scores

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Using algorithms to analyze tens of thousands of separate pieces of private information about every American, corporations are secretly applying surveillance scores to charge some people – but not others – higher prices, limit their access to customer service, prevent them from returning products, deny them housing and jobs and even tag them as potential criminals, according to a petition to the Federal Trade Commission filed today by consumer advocates.

Because they are concealed from the public, there is no way to verify the Surveillance Scores, the validity of the algorithms that produce them, or the accuracy of the data that the scores are based on. The result is unlawful discrimination against Americans based on their income, spending habits and other personal characteristics.

"Using 'Secret Surveillance Scores,' the tech industry is weaponizing the personal information of every American and turning it against us," said the petition's author Laura Antonini, Policy Director of the non-profit #REPRESENT. "Secret Surveillance Scoring undermines basic American ideals of equality and free markets. We believe it violates federal law. The FTC must investigate and expose these practices and put an end to them."

Read the petition **here**.

Secret Surveillance Scoring Discriminates Against People Who Have Done Nothing Wrong

Major U.S. corporations, including retailers, airlines, landlords and employers, enlist "a shadowy group of privacy-busting firms that operate in in the dark recesses of the American marketplace" to generate Secret Surveillance Scores, the consumer advocates explain. The firms collect tens of thousands of intimate details of each person's life and generate algorithms to develop a "digital mug shot" of every American, which is eventually reduced to a score that ranks every American person and household, the petition explains. The Secret Surveillance Scores are then used to treat consumers differently.

- **Retailers charge different prices to different consumers for the same product based on Secret Surveillance Scores that predict how profitable a particular customer is to the companies.** For example, Home Depot and Walmart quote different prices for different users for everyday items like paint, pens and paper towels, while travel

companies like CheapTickets and Travelocity quote different prices for different users for airfare and hotels.

- **"Less valuable" customers get crummy customer service – or no customer service at all.** These consumers face long hold times and can be denied assistance altogether. In an era in which courts have relentlessly blocked class action lawsuits, denying American consumers access to customer services leaves them with no way to correct errors or resolve disputes over faulty or fraudulent purchases.

- **Customers who fail the algorithms are tagged as potential criminals and denied the right to return an item, or even buy it.** Companies marketing their Secret Surveillance Scores claim their algorithms can predict when a customer will return an item, or call customer service to make a complaint or request help, and label those consumers as fraudsters. When a customer is flagged as a potential crook by a "fraud prevention" score, the retailer will deny a customer the right to return an item. Some companies that utilize these fraud scores even deny a consumer the right to purchase an item in the first place.

- **Secret Surveillance Scores deny people housing or employment.** A consumer may be denied a job or housing based on a score that blacklists him simply because he uses a particular web browser.

Surveillance Scoring Industry Keeps Public, Regulators and Lawmakers in the Dark

Everything about Secret Surveillance Scores is hidden from the public: the existence of the scores, the kinds of data being fed into the algorithms, the source of the data, the score itself and the algorithm that created it, the petition explains. Scores may be based on inaccurate information about a consumer, but since the scoring firms do not reveal any information about Secret Surveillance Scores, there is no way to know whether companies are using unreliable personal information against a consumer. Consumers consequently have no recourse when a score based on inaccurate information is used to make a decision about them.

Tech Industry Attack on Fairness and Free Markets

The petition arrives at the confluence of two seismic trends in the nation. The FTC has increased its scrutiny of the tech industry in response to an unprecedented number of privacy breaches, charges of anticompetitive conduct and growing recognition of the extraordinary power a handful of firms exercise over the American economy, culture and politics. At the same time, the increasing disparity of wealth and power in the United States has instigated a growing backlash among those who have yet to recover from the 2008 economic disaster.

Secret Surveillance Scores are "yet another way to divide Americans into the 'haves' and the 'have-nots, with the have-nots relegated to the status of second-class citizens who are not only victims of overcharges and other abuses but are often treated as if they were criminals," the petition states.

"Secret Surveillance Scores institutionalize income inequality," said Harvey Rosenfield, President of #REPRESENT and co-author of the petition. "Using these scores is a tactic for companies to cloak their covert discrimination against middle class working people in the aura of technological infallibility. This practice contradicts and undermines the bedrock principles of competition and fairness that have served as a foundation for the nation's marketplace."

The Petition Seeks Investigation and Enforcement

Under federal law, the FTC has the authority and obligation to investigate and prosecute unfair or deceptive acts or practices "in or affecting commerce." Based on an analysis of the law, the petition concludes that Secret Surveillance Scores violate federal law.

The petition requests that the Commission investigate the use of Secret Surveillance Scores in the U.S. marketplace to determine (1) how Secret Surveillance Scores are generated and applied; (2) which companies are generating and applying Secret Surveillance Scores; (3) which consumers are being targeted by companies using these scores; and (4) the impact of Secret Surveillance Scores on consumers and the marketplace.

Additionally, the #REPRESENT consumer advocates identify and ask the Commission to investigate specific companies that develop and apply Secret Surveillance Scores, including some of the nation's most familiar online and brick and mortar brands: Home Depot, Walmart, Best Buy, Sephora, Victoria's Secret, Macy's and Starbucks.

Read the petition submitted on behalf of #REPRESENT **here**.

About #REPRESENT

#REPRESENT is a project of the Consumer Education Foundation, a California nonprofit consumer advocacy organization. Visit our website at www.representconsumers.org. Follow us on Twitter @WeAreRepresent.