

## **Facing Pandemic Privacy Invasions, Federal Trade Commission Locks Itself Down**

### ***No Action on Scores Used to Secretly Discriminate Against American Consumers***

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Nearly a year after consumer advocates petitioned the Federal Trade Commission to stop companies from using “secret surveillance scores” to mistreat and discriminate against consumers, the Commission has responded – in a blog – by advising the tech industry to regulate itself.

The Commission’s failure comes as American consumers face a massive increase in the collection and use of their personal data – initially to track people who the algorithms predict are infected with COVID-19 and to evaluate their social distancing measures; and later to limit or disqualify them from access to life’s basic necessities like jobs, housing, or education.

Calling the FTC’s lockdown “a deeply disappointing and wholly inadequate response” to its June 2019 Petition, today’s letter from #REPRESENT, a California-based non-profit organization, said, “data industry predators are poised to market new scores based on data collected during the pandemic to determine who can re-enter the workforce, who can rent an apartment, who can attend school, the terms of insurance, prices consumers will pay for products and services, how valuable a corporation considers a consumer, and whether a consumer is considered a fraud threat.”

“Absent urgent measures to quarantine sensitive information about our health, location, and financial stability, Americans will unknowingly become the victims of unprecedented algorithmic discrimination.”

Read the letter sent by #REPRESENT to the Commission [here](#).

### **#REPRESENT’s 2019 Petition Exposed Financial and Social Injuries to Consumers from Secret Surveillance Scoring**

The 2019 Petition submitted to the Commission by #REPRESENT asked the FTC to use its authority under Section 5 of the Federal Trade Commission Act to investigate and prosecute a shadowy group of privacy-busting firms that operate in the dark recesses of the American marketplace that generate secret surveillance scores. 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. These secret surveillance scores – which are like credit scores on steroids - dictate how consumers are treated by corporations, landlords, employers, and schools.

Read #REPRESENT’s 2019 Petition to the Commission [here](#).

## **Proposed Privacy Invasions Will Expand Secret Surveillance Scoring**

“Now, COVID-19 poses an unprecedented threat to consumers’ health and economic well-being. Authorities are trying to determine how America will reconstruct itself after a near-total economic shutdown, and the danger of Secret Surveillance Scoring has grown exponentially,” Laura Antonini and Harvey Rosenfield, authors of the letter, state. Their letter points out that credit bureau Experian is compiling profiles of consumers who are financially suffering as a result of the pandemic; tenant screening company Naborly is tracking people who cannot pay rent; Amazon is scoring workers likely to contest poor working conditions in its Whole Foods grocery stores; Google, Facebook, and other companies are tracking peoples’ movements; and data about people’s health is being collected by companies like Apple, Google, 23andMe, and smart-thermometer maker Kinsa Health.

Ms. Antonini and Mr. Rosenfield warn that the current surveillance of peoples’ health-related data, movements, and financial stability could be used in secret surveillance scores to discriminate against consumers and deny them participation in society.

### **The FTC’S Failure to Act**

#REPRESENT received no response to its 2019 Petition from the Commission. However, on April 8, 2020, the FTC posted a blog titled “Using Artificial Intelligence and Algorithms.” The blog post mentions secret surveillance scoring – but suggests that companies should “consider how” to explain algorithmic decisions and surveillance scores to consumers, and should hold themselves accountable when those decisions and scores are unfair or discriminatory against Americans.

Read the letter sent by #REPRESENT to the Commission [here](#).

### **The FTC Must Take Actions to Protect Consumers from Unfair and Discriminatory Algorithmic Decisions and Secret Surveillance Scoring**

The letter sent by #REPRESENT demands the Commission:

- **Promulgate rules requiring data analytics firms and the companies that buy their products to disclose: the data and factors used in used in an algorithmic decision or secret surveillance score, the source of the data, when a secret surveillance score was used to make a decision about a consumer, and what the decision or score is.**
- **Give consumers the rights to correct inaccuracies in the data used in an algorithmic decision or secret surveillance score, and to contest an algorithmic decision or secret surveillance score.**
- **Prohibit companies from: (i) using data based on legally-protected classifications (race, religion, national origin, sex, marital status, age) to generate an algorithmic decision or secret surveillance score, and (ii) using**

**algorithmic decisions or secret surveillance scores that produce disparate impacts on those in protected classes.**

- **Investigate and prosecute companies whose algorithmic decision-making and surveillance scoring practices violate Section 5 of the Federal Trade Commission Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, or any of the above requirements.**

“The Commission refuses to use its arsenal of legal authority to protect consumers against unfair algorithmic decision-making and secret surveillance scoring. Instead of using its authority, it posted suggestions in a blog post that companies will not read, much less follow,” said Ms. Antonini. “The Commission’s suggestion that the data-pillaging tech industry regulate itself does nothing to protect consumers from the threat of the highly sensitive data being collected during the pandemic being used to discriminatorily score consumers in the future.”

“More than a blog post is necessary to protect the American people from discriminatory and unfair algorithmic decision-making and Secret Surveillance Scoring. Those scores will be used to victimize consumers long after the pandemic.”

Read #REPRESENT’s letter to the Commission [here](#).

Read #REPRESENT’s 2019 Petition to the Commission [here](#).

Read the Commission’s blog post [here](#).

### **About #REPRESENT**

#REPRESENT is a project of the Consumer Education Foundation, a California nonprofit consumer advocacy organization. Learn more about us at <https://www.representconsumers.org/about-us/>. Follow us on Twitter [@WeAreRepresent](#).