

FEDERAL TRADE COMMISSION  
Washington, DC 20580

In the Matter of )  
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Airbnb, Inc. )  
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**Complaint and Request for Investigation, Injunction, and Other Relief**

**Submitted by**

**The Electronic Privacy Information Center (EPIC)**

**I. Summary**

1. This complaint concerns Airbnb’s deployment of a “risk assessment” technique that assigns secret rating to prospective renters, based on behavior traits using an opaque, proprietary algorithm. Airbnb has failed to show that its technique meets the fairness, transparency, and explainability standards for AI-based decision-making set out in the OECD AI Principles and the Universal Guidelines for AI. The company has engaged in unfair and or deceptive trade practices in violation of Section 5 of the FTC Act. For the reasons, set out below the Commission should open an investigation, issue an injunction, and provide such other relief as EPIC has proposed.

**II. Parties**

2. The Electronic Privacy Information Center (“EPIC”) is a public interest research center in Washington, DC. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC has played a leading role in developing the authority of the FTC to address emerging privacy issues and to safeguard the privacy rights of consumers.<sup>1</sup> EPIC is also a leading advocate for algorithmic transparency and

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<sup>1</sup> See, e.g., Comments of EPIC, *In re Unrollme, Inc.*, FTC File No. 1723139 (Sept. 19, 2019), <https://epic.org/apa/comments/EPIC-FTC-Unrollme-Sept2019.pdf>; Comments of EPIC, *In re Aleksandr Kogan and Alexander Nix*, FTC File No. 182 3106 & 1823107 (Sept. 3, 2019), <https://epic.org/apa/comments/EPIC-FTC-CambridgeAnalytica-Sept2019.pdf>; Comments of EPIC, *Standards for Safeguarding Customer Information*, FTC Document No. 2019-10910 (Aug. 1, 2019), <https://epic.org/apa/comments/EPIC-FTC-Safeguards-Aug2019.pdf>; *In re Zoom Video Commc’ns, Inc.* (Complaint, Request for Investigation, Injunction, and Other Relief), July 11, 2019), <https://epic.org/privacy/ftc/zoomEPIC-FTC-Complaint-In-re-Zoom-7-19.pdf>; Comments of EPIC, *In re Uber Technologies, Inc.*, FTC, Docket No. 152-3054 (May 14, 2018), <https://epic.org/apa/comments/EPIC-FTC-Revised-Uber-Settlement.pdf>; Comments of EPIC, *In re Paypal, Inc.* FTC File No. 162-3102, (Mar. 29, 2018), <https://epic.org/apa/comments/EPIC-FTC-PayPal-ConsentOrder.pdf>; *In re Google Inc.* (Complaint, Request for

ethical limitations on the use of artificial intelligence.<sup>2</sup> EPIC recently filed a petition with the Federal Trade Commission for a rulemaking “concerning the use of artificial intelligence in commerce.”<sup>3</sup> The petition follows two EPIC complaints to the FTC about the use of AI for employment screening<sup>4</sup> and the secret scoring of young athletes.<sup>5</sup> EPIC also filed comments with the U.S. Department of Housing and Urban Development recommending independent audits of the accuracy and reliability of algorithmic-based determinations.<sup>6</sup>

3. Airbnb Inc. (“Airbnb”) is a Delaware corporation headquartered in San Francisco, California, that offers vacation home rentals.<sup>7</sup> Airbnb “operates an online marketplace for hospitality services. The Company offers lodging, homestays, and tourism services via websites and mobile applications.”<sup>8</sup>
4. The FTC is an independent agency of the United States government given statutory authority and responsibility by, *inter alia*, the FTC Act, 15 U.S.C. §§ 41-58, and the FCRA, 15 U.S.C. §§ 1681-1681x. The Commission is charged, *inter alia*, with enforcing section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce; and the FCRA, which imposes duties upon consumer reporting agencies. FTC Commissioner Rohit Chopra has recognized the dangers of algorithmic bias and the need for algorithmic transparency in the fair housing context.<sup>9</sup>

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Investigation, Injunction, and Other Relief), July 31, 2017, <https://www.epic.org/privacy/ftc/google/EPIC-FTC-Google-Purchase-Tracking-Complaint.pdf>; *In re Genesis Toys and Nuance Communications* (Complaint and Request for Investigation, Injunction, and Other Relief), Dec. 6, 2016, <https://epic.org/privacy/kids/EPIC-IPR-FTC-Genesis-Complaint.pdf>.

<sup>2</sup> *Algorithmic Transparency: End Secret Profiling*, EPIC (2019), <https://epic.org/algorithmic-transparency/>.

<sup>3</sup> EPIC Petition for Rulemaking Concerning the Use of Artificial Intelligence in Commerce (Feb. 3, 2020), <https://epic.org/privacy/ftc/ai/EPIC-FTC-AI-Petition.pdf>.

<sup>4</sup> Complaint and Request for Investigation, Injunction, and Other Relief, *In re HireVue* (Nov. 6, 2019), [https://epic.org/privacy/ftc/hirevue/EPIC\\_FTC\\_HireVue\\_Complaint.pdf](https://epic.org/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf).

<sup>5</sup> Complaint, Request for Investigation, Injunction, and Other Relief, *In re Universal Tennis*, (May 17, 2017), <https://epic.org/algorithmic-transparency/EPIC-FTC-UTR-Complaint.pdf>.

<sup>6</sup> EPIC, Comment on HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard (Oct. 18, 2019), <https://epic.org/apa/comments/EPIC-HUD-Oct2019.pdf>.

<sup>7</sup> Statement of Information, Form No. G798069 (Jul. 16, 2019), <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=03154868-26575349>.

<sup>8</sup> Airbnb Inc – Company Profile, Terms of Service (last updated Nov. 19, 2019), <https://www.airbnb.com/terms>.

<sup>9</sup> FTC Commissioner Rohit Chopra, Comment on HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard (Oct. 16, 2019), [https://www.ftc.gov/system/files/documents/public\\_statements/1549212/chopra\\_-\\_letter\\_to\\_hud\\_on\\_disparate\\_impact\\_proposed\\_rulemaking\\_10-16-2019.pdf](https://www.ftc.gov/system/files/documents/public_statements/1549212/chopra_-_letter_to_hud_on_disparate_impact_proposed_rulemaking_10-16-2019.pdf).

### **III. Public Policy for the Use of Artificial Intelligence**

#### **A. The OECD AI Principles**

5. The Organization for Economic Cooperation and Development (“OECD”) was established in 1961 to promote economic cooperation and development.<sup>10</sup>
6. There are presently 36 members of the OECD, including the United States.<sup>11</sup>
7. In 2019, the member nations of the OECD, working with many non-OECD member countries, promulgated the OECD Principles on Artificial Intelligence.<sup>12</sup>
8. The United States has endorsed the OECD AI Principles.<sup>13</sup>
9. The G-20 Countries have endorsed the OECD AI Principles.<sup>14</sup>
10. According to the OECD AI Principle on Human-Centered Values and Fairness, “AI actors should respect the rule of law, human rights and democratic values, throughout the AI system lifecycle. These include freedom, dignity, and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognized labour rights.”<sup>15</sup>
11. According to the OECD AI Principle on Robustness, Security, and Safety, “AI systems should be robust, secure and safe throughout their entire lifecycle so that, in conditions of normal use, foreseeable use or misuse, or other adverse conditions, they function appropriately and do not pose unreasonable safety risk.”<sup>16</sup>
12. According to the OECD AI Principle on Transparency and Explainability, AI Actors should “provide meaningful information, appropriate to the context, and consistent with the state of art (i) to foster a general understanding of AI systems, (ii) to make stakeholders aware of their interactions with AI systems, including in the workplace, (iii) to enable those affected by an AI system to understand the outcome, and (iv) to enable those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision.”<sup>17</sup>

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<sup>10</sup> *History*, OECD, [oecd.org/about/history](https://oecd.org/about/history).

<sup>11</sup> *Id.*

<sup>12</sup> *Recommendation of the Council on Artificial Intelligence*, OECD (May 21, 2019), [legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449](https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449), reprinted in MARC ROTENBERG, THE AI POLICY SOURCEBOOK 111-21 (EPIC 2020), <https://www.epic.org/bookstore/ai2020/>.

<sup>13</sup> *U.S. Joins with OECD in Adopting Global AI Principles*, NTIA (May 22, 2019), <https://www.ntia.doc.gov/blog/2019/us-joins-oecd-adopting-global-ai-principles>.

<sup>14</sup> *G20 Ministerial Statement on Trade and Digital Economy*, <https://www.mofa.go.jp/files/000486596.pdf>.

<sup>15</sup> OECD Principle 1.2(a), *supra* note 12.

<sup>16</sup> OECD Principle 1.4(a), *supra* note 12.

<sup>17</sup> OECD Principle 1.3, *supra* note 12.

13. According to the OECD AI Principle on Accountability, “[o]rganisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.”<sup>18</sup>
14. The OECD Principles on Artificial Intelligence are “established public policies” within the meaning of the FTC Act.<sup>19</sup>

## **B. The Universal Guidelines for AI**

15. The Universal Guidelines for Artificial Intelligence (“UGAI”), a framework for AI governance based on the protection of human rights, were set out at the 2018 meeting of the International Conference on Data Protection and Privacy Commissioners in Brussels, Belgium.<sup>20</sup>
16. The UGAI have been endorsed by more than 250 experts and 60 organizations in 40 countries.<sup>21</sup>
17. According to the UGAI Right to Transparency, “All individuals have the right to know the basis of an AI decision that concerns them. This includes access to the factors, the logic, and techniques that produced the outcome.”<sup>22</sup>
18. According to the UGAI Assessment and Accountability Obligation, “An AI system should be deployed only after an adequate evaluation of its purpose and objectives, its benefits, as well as its risks.”<sup>23</sup>
19. According to the UGAI Accuracy, Reliability, and Validity Obligations, “Institutions must ensure the accuracy, reliability, and validity of decisions.”<sup>24</sup>
20. According to the UGAI Fairness Obligation, “Institutions must ensure that AI systems do not reflect unfair bias or make impermissible discriminatory decisions.”<sup>25</sup>
21. The Universal Guidelines for Artificial Intelligence are “established public policies” within the meaning of the FTC Act.<sup>26</sup>

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<sup>18</sup> OECD Principle 1.5, *supra* note 12.

<sup>19</sup> 15 U.S.C. § 45(n).

<sup>20</sup> *Universal Guidelines for Artificial Intelligence*, The Public Voice (Oct. 23, 2018), <https://thepublicvoice.org/ai-universal-guidelines/>; [thepublicvoice.org/events/brussels18](https://thepublicvoice.org/events/brussels18), reprinted in MARC ROTENBERG, THE AI POLICY SOURCEBOOK 170-75 (EPIC 2020), <https://www.epic.org/bookstore/ai2020/>.

<sup>21</sup> *Universal Guidelines for Artificial Intelligence: Endorsement*, The Public Voice (Oct. 23, 2019), <https://thepublicvoice.org/AI-universal-guidelines/endorsement/>.

<sup>22</sup> UGAI Guideline 1, *supra* note 12.

<sup>23</sup> UGAI Guideline 1, *supra* note 12.

<sup>24</sup> UGAI Guideline 6, *supra* note 12.

<sup>25</sup> UGAI Guideline 4, *supra* note 12.

<sup>26</sup> 15 U.S.C. § 45(n).

## **IV. Factual Background**

### **A. Airbnb Uses a Secret Algorithm to Generate Consumer “Risk Scores”**

22. Airbnb generates a risk assessment score for consumers before their reservations are confirmed. As the company explains on their website: “Risk scoring. Every Airbnb reservation is scored for risk before it’s confirmed. We use predictive analytics and machine learning to instantly evaluate hundreds of signals that help us flag and investigate suspicious activity before it happens.”<sup>27</sup>
23. Airbnb also collects information about user activities off the platform through third-party commercial relations.<sup>28</sup>
24. In 2014, the company Trooly, Inc., was granted a U.S. Patent US9070088B1 for “Determining trustworthiness and compatibility of a person.”<sup>29</sup>
25. Airbnb acquired Trooly in 2017 and is the current assignee of U.S. Patent US9070088B1.
26. The patent describes how a company such as Airbnb could use the technique: “a service provider can provide a short-term lodging arrangement service that facilitates a short-term rental agreement between a first user (e.g., a landlord) and a second user (e.g., a tenant).”<sup>30</sup>
27. Airbnb uses this algorithm to score its customers’ “trustworthiness” based on personal information obtained third-parties.<sup>31</sup> According to the patent application, machine learning inputs include personal data collected from “web pages, information from databases, posts on the person’s social network account, posts on a blog or a microblog account of the person, a comment made by the person on a website, or a directory listing for a company or association.”<sup>32</sup>
28. Airbnb’s algorithm claims to identify “negative traits” including whether the individual “created a false or misleading online profile, provided false or misleading information to the service provider, is involved with drugs or alcohol, is involved with hate websites or organizations, is involved in sex work, perpetrated a crime, is involved in civil litigation, is a known fraudster or scammer, is involved in pornography, has authored online content with negative language, or has interests that indicate negative personality or behavior traits.”<sup>33</sup>

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<sup>27</sup> Airbnb, Help Center: What does it mean when someone’s ID has been checked? (2020), <https://www.airbnb.com/help/article/2356/what-does-it-mean-when-someones-id-has-been-checked>.

<sup>28</sup> Airbnb, Privacy Policy (2020), [https://www.airbnb.com/terms/privacy\\_policy](https://www.airbnb.com/terms/privacy_policy).

<sup>29</sup> U.S. Patent No. 9,070,088 (filed June 30, 2015) [hereinafter “Patent”].

<sup>30</sup> Patent at col. 4 l. 43-46.

<sup>31</sup> Patent at col. 5-6.

<sup>32</sup> Patent at col. 5 l. 64-67.

<sup>33</sup> Patent at col. 2 l. 7-15.

29. Airbnb also claims that the algorithm evaluates the individual’s relationships with others, and adjusts the “trustworthiness” score based on the scores of those associations: “The aspect can further comprise receiving an indication that a second person trusts the person, creating a relationship between the second person and the person, and adjusting the trustworthiness score of the person based on, at least, the trustworthiness score of the second person.”<sup>34</sup>
30. The information that Airbnb uses to identify individuals includes: “name, email address, telephone number, geographic location, date of birth, social connections, employment history, education history, driver's license number, financial account information, Internet Protocol (IP) address, and device identifier.”<sup>35</sup>
31. The Airbnb algorithm assigns “trustworthiness” scores based on personality and behavior traits that “predict the likelihood of the person being a positive actor in an online or offline person to-person interaction.”<sup>36</sup>
32. The Airbnb algorithm assigns personality traits to customers, including: “badness, anti-social tendencies, goodness, conscientiousness, openness, extraversion, agreeableness, neuroticism, narcissism, Machiavellianism, or psychopathy.”<sup>37</sup>
33. The Airbnb algorithm identifies use of “derogatory or angry words” to categorize an individual as having an anti-social personality.<sup>38</sup>
34. The Airbnb algorithm identifies use of words associated with criminal activity—such as “arrest,” “indict,” “bond,” “convict,” “misdemeanor,” “petty theft,” “homicide,” “robbery,” and “assault”—to categorize an individual as having a criminal behavior trait.<sup>39</sup>

## **B. Airbnb’s “Trustworthiness” Scores Produce Results that Are Biased, Unprovable, and Not Replicable**

35. The premise of Airbnb’s scoring system is that personality traits, behavioral traits, and trustworthiness can be measured by analyzing large volumes of personal data. But these traits are inherently subjective. An algorithm cannot assess a *particular* individual’s relative “goodness” or “badness.” The flawed premise of Airbnb’s scoring system calls into question its reliability, provability, and fairness.
36. The “trustworthiness” scores and the methods and data used to generate the scores are not transparent. U.S. Patent No. 9,070,088 describes business practices that are proprietary to

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<sup>34</sup> Patent at col. 2 l. 17-22.

<sup>35</sup> Patent at col. 2 l. 47-51.

<sup>36</sup> Patent at col. 2 l. 49-51.

<sup>37</sup> Patent at col. 2 l. 36-38.

<sup>38</sup> Patent at col. 15 l. 26-27.

<sup>39</sup> Patent at col. 15 l. 29-31.

Airbnb. Airbnb’s website discloses the existence of risk scores but does not disclose how prospective renters are evaluated.<sup>40</sup>

37. The descriptions included in Airbnb’s patent do not establish that the technique is reliable. For example, the algorithm attempts to flag “sex work or pornography,” by assigning “a higher score or weight (e.g., 0.3)...if a word ‘breast’ is in the same sentence as another word referencing a female [and a] low score or weight (e.g., 0.0)...if the word ‘breast’ is in the phrase ‘breast cancer.’”<sup>41</sup> The example given does not establish a likelihood of sex work or pornography. There are many alternative explanations for why the word “breast” could be used in a sentence with another word referencing a woman.
38. Similarly, there are many reasons why a person might use words associated with criminal activity: they could be a victim of a crime, a journalist reporting on crimes, a prosecutor or criminal defense attorney working on a criminal case, an advocate for criminal justice reform, or a private citizen discussing criminal justice policy issues or a crime reported in the news.
39. Airbnb’s score is also unreliable and potentially unfair because it relies on information that is not necessarily related to the individual. It calculates an “identity score” for each document analyzed and “the more closely the document is related to the person, the heavier weights are given to the initial scores derived from the document.”<sup>42</sup> Therefore, some of the data analyzed to calculate an individual’s score might not actually relate to that person.
40. Airbnb also relies extensively on natural language analysis in its algorithm, which presents the risk of biased results. For example, a study of algorithms used to identify hate speech found that “insensitivity to differences in dialect can lead to racial bias.”<sup>43</sup> The study found a strong correlation between annotations of offensiveness and the African American English dialect. Airbnb’s assessment of whether an individual “has authored online content with negative language”<sup>44</sup> could exhibit similar racial bias.
41. Airbnb’s predictions about the likelihood of future criminal activity also present an acute risk of bias. Algorithms used by judges in sentencing to predict future criminal activity have been found to be unreliable and were twice as likely to mislabel black defendants as

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<sup>40</sup> Airbnb, Help Center: What does it mean when someone’s ID has been checked? (2020), <https://www.airbnb.com/help/article/2356/what-does-it-mean-when-someones-id-has-been-checked>.

<sup>41</sup> Patent at col. 16 l. 9-13.

<sup>42</sup> Patent at col. 16 l. 14-20.

<sup>43</sup> Maarten Sap, Dallas Card, Saadia Gabriel, Yejin Choi & Noah A Smith, *The Risk of Racial Bias in Hate Speech Detection*, Proceedings of the 57th Annual Meeting of the Association for Computational Linguistics (2019), <https://homes.cs.washington.edu/~msap/pdfs/sap2019risk.pdf>.

<sup>44</sup> Patent at 2.

future criminals than white defendants.<sup>45</sup> Policing data is the result of choices that undermine the credibility of the data.<sup>46</sup>

## V. Legal Analysis

### A. FTC Act

42. Section 5 of the FTC Act prohibits unfair and deceptive acts and practices.<sup>47</sup>
43. A company engages in a deceptive trade practice if it makes a representation to consumers yet “lacks a ‘reasonable basis’ to support the claims made[.]”<sup>48</sup>
44. A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”<sup>49</sup>
45. In determining whether a trade practice is unfair, the Commission is expected to consider “established public policies.”<sup>50</sup>

### B. Fair Credit Reporting Act

46. In 1970 Congress passed the Fair Credit Reporting Act (“FCRA”) because of “a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy.”<sup>51</sup>
47. Under FCRA, a consumer reporting agency is “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.”<sup>52</sup>

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<sup>45</sup> Julia Angwin, et al., *Machine Bias* (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

<sup>46</sup> Joh, Elizabeth E., *Feeding the Machine: Policing, Crime Data, & Algorithms*, 26 William & Mary Bill of Rights J. 287 (2017).

<sup>47</sup> 15 U.S.C. § 45.

<sup>48</sup> *Daniel Chapter One v. FTC*, 405 F. App’x 505, 506 (D.C. Cir. 2010) (quoting *Thompson Med. Co., Inc., v. FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986)).

<sup>49</sup> 15 U.S.C. § 45(n); *see also FTC v. Seismic Entm’t Prods., Inc.*, Civ. No.1:04-CV-00377 (Nov. 21, 2006) (finding that unauthorized changes to users’ computers that affected the functionality of the computers as a result of Seismic’s anti-spyware software constituted a “substantial injury without countervailing benefits.”).

<sup>50</sup> 15 U.S.C. § 45(n).

<sup>51</sup> 15 U.S.C. § 1681(a)(4).

<sup>52</sup> 15 U.S.C. § 1681a(f).

48. FTC guidance states that a company may be a consumer reporting agency “if it provides information about people to landlords for use in housing decisions.”<sup>53</sup>
49. Under FCRA, a consumer report is “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.”<sup>54</sup>
50. Section 603(d)(2)(A)(i) of the FCRA excludes from the definition of consumer report “any report containing information solely as to transactions or experiences between the consumer and the person making the report.”
51. Under FCRA, an investigative consumer report is “a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.”<sup>55</sup>
52. FCRA imposes requirements on consumer reporting agencies that furnish consumer reports on behalf of third parties.<sup>56</sup>
53. FCRA requires consumer reporting agencies to disclose all information in the consumer’s file to the consumer upon request.<sup>57</sup>
54. FCRA requires user identity verification. A consumer reporting agency is required to “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”<sup>58</sup>
55. FCRA requires consumer reporting agencies to provide individuals an opportunity to challenge information they believe is inaccurate and to reinvestigate allegedly incorrect information.<sup>59</sup>
56. Consumer reporting agencies must disclose that they are preparing investigative consumer reports to the subjects of the report.<sup>60</sup>
57. Consumer reporting agencies must provide an individual with a copy of their investigative consumer report upon request.<sup>61</sup>

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<sup>53</sup> FTC, *What Renter Background Screening Companies Need to Know About the Fair Credit Reporting Act* (Oct. 2016), <https://www.ftc.gov/tips-advice/business-center/guidance/what-renter-background-screening-companies-need-know-about-fair>.

<sup>54</sup> 15 U.S.C. § 1681d.

<sup>55</sup> 15 U.S.C. § 1681e.

<sup>56</sup> 15 U.S.C. § 1681c.

<sup>57</sup> 15 U.S.C. § 1681g(a).

<sup>58</sup> 15 U.S.C. § 1681e(b).

<sup>59</sup> 15 U.S.C. § 1681i.

<sup>60</sup> 15 U.S.C. § 1681d(a).

<sup>61</sup> 15 U.S.C. § 1681d(b).

58. Consumer reporting agencies are prohibited from preparing an investigative consumer report containing adverse information on the individual based on interviews with the individual’s neighbors, friends, or associates unless “the agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information” or “the person interviewed is the best possible source of the information.”<sup>62</sup>

## **VI. Airbnb’s Violations of the FTC Act**

### **A. Airbnb’s Algorithmic Assessments Violate the OECD Principles on AI**

59. As described above, Airbnb uses secret algorithms to purportedly assess the personality and behavior traits of prospective renters.
60. Airbnb’s use of secret algorithms to analyze prospective renters’ personal data violates widely adopted standards for the use of AI and is “unfair” within the meaning of the FTC Act.
61. Airbnb’s algorithmic assessments of prospective renters are not transparent.
62. Airbnb’s algorithmic assessments of prospective renters cannot be evaluated or understood by the renters.
63. Airbnb’s algorithmic assessments of prospective renters cannot be meaningfully challenged.
64. Airbnb should be held accountable for the proper functioning of its secret algorithmic assessments.
65. Airbnb has therefore violated the OECD Principles on Artificial Intelligence.

### **B. Airbnb’s Algorithmic Assessments Violate the Universal Guidelines for AI**

66. Airbnb does not provide prospective renters with access to the training data, factors, logic, or techniques used to generate each algorithmic assessment.
67. Airbnb has not adequately evaluated whether the purpose, objectives, and benefits of its algorithmic assessments outweigh the risks.
68. Airbnb has not ensured the accuracy of its algorithmic assessments.
69. Airbnb has not ensured the reliability of its algorithmic assessments.
70. Airbnb has not ensured the validity of its algorithmic assessments.

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<sup>62</sup> 15 U.S.C. § 1681d(d)(4).

71. Airbnb has not established that the assessments are free of unfair bias and impermissible discrimination.
72. Airbnb has therefore violated the Universal Guidelines for Artificial Intelligence.

### **C. Airbnb’s Algorithmic Assessments Are ‘Unfair’ Under the FTC Act**

73. Airbnb’s use of secret algorithms is “unfair” because it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”<sup>63</sup>
74. Airbnb’s use of secret algorithms causes or is likely to cause substantial injury to a large class of people—namely, prospective renters who are denied the ability to reserve short-term rental properties as a result of a negative score.
75. Airbnb uses personal data to generate an algorithmic assessment that they claim measures each prospective renter’s “trustworthiness and accountability.”<sup>64</sup> These scores impact whether prospective landlords approve prospective renters.
76. Because these algorithms are secret, it is impossible for prospective renters to know how their personal data is being used and meaningfully consent to such uses.
77. Airbnb’s intrusive collection and secret analysis of personal data thus causes substantial privacy harms to prospective renters.
78. Prospective renters are denied housing opportunities based on Airbnb’s algorithmic assessments, and many of those same individuals are forced to expend significant resources to identify alternate housing opportunities.
79. The injuries caused by Airbnb’s use of secret algorithms cannot be reasonably avoided. Airbnb customers are not given an opportunity to opt out of or meaningfully challenge Airbnb’s assessments.
80. The harms caused by Airbnb’s use of secret algorithms are not outweighed by countervailing benefits to consumers or to competition.
81. Airbnb is therefore engaged in an unfair trade practice in violation of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1).

### **VII. Airbnb’s Violations of FCRA**

82. Airbnb is a consumer reporting agency because it “regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties,

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<sup>63</sup> 15 U.S.C. § 45(n).

<sup>64</sup> Patent at col. 1.

and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.”<sup>65</sup>

83. Airbnb’s “trustworthiness scores” are consumer reports under FCRA because they evaluate “character,” “general reputation,” and “personal characteristics.”<sup>66</sup>
84. Airbnb does not qualify for the exception to the consumer report definition under Section 603(d)(2)(A)(i) because the reports are based on information from third-party sources. The reports do not contain solely information about transactions or experiences between Airbnb and the individuals. The reports incorporate information from social networks, the servers of public and commercial databases, blogs, web pages, search engine results, and directories.<sup>67</sup>
85. Airbnb does not meet the FCRA accuracy requirement because the company does not “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”<sup>68</sup>
86. Airbnb’s “trustworthiness scores” are investigative consumer reports under FCRA because they evaluate an individual’s character by analyzing communications with other people. Rather than conducting in-person interviews, Airbnb is assessing the statements of the individual’s associates by analyzing their social media posts.
87. Airbnb does not disclose that it prepares investigative consumer reports to the subjects of the report.<sup>69</sup>
88. Airbnb does not provide an individual with a copy of their investigative consumer report upon request.<sup>70</sup>

### **VIII. Prayer for Investigation and Relief**

89. EPIC urges the Commission to investigate Airbnb and to find that its uses of secret, unproven algorithm constitute unfair and deceptive trade practices under Section 5 of the FTC Act.
90. EPIC further urges the Commission to:
  - a. Initiate an investigation into the business practices of Airbnb;
  - b. Halt Airbnb’s scoring of renters pending substantial changes in business practices;
  - c. Require Airbnb to comply with FCRA;

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<sup>65</sup> 15 U.S.C. § 1681(f).

<sup>66</sup> 15 U.S.C. § 1681(d).

<sup>67</sup> Patent at fig. 1.

<sup>68</sup> 15 U.S.C. § 1681e(b).

<sup>69</sup> 15 U.S.C. § 1681d(a).

<sup>70</sup> 15 U.S.C. § 1681d(b).

- d. Require that Airbnb make public the algorithm used to produce assessments of prospective renters;
- e. Require that Airbnb make known to customers the precise basis for their evaluation;
- f. Require that Airbnb comply with the requirements of the OECD AI Principles;
- g. Require that Airbnb comply with the requirements of the Universal Guidelines for AI; and
- h. Provide such other relief as the Commission finds necessary and appropriate.

Respectfully Submitted,

*Marc Rotenberg*

Marc Rotenberg  
EPIC Executive Director

*Christine Bannan*

Christine Bannan  
EPIC Consumer Protection Counsel

*John Davisson*

John Davisson  
EPIC Counsel

*Alan Butler*

Alan Butler  
EPIC General Counsel

Electronic Privacy Information Center (EPIC)  
1519 New Hampshire Ave. NW  
Washington, DC 20036  
202-483-1140 (tel)  
202-483-1248 (fax)