



January 26, 2022

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Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: FTC-2021-0070, Comments in Response to Petition for Rulemaking by Accountable Tech

Thank you for the opportunity to submit comments regarding the Federal Trade Commission's (FTC) request for comments in response to the petition for rulemaking by Accountable Tech, published in the Federal Register on December 27, 2021.

The Asian American Tech Table was created to facilitate a more unified Asian American voice and presence in national tech and telecom policy debates. The Table, which is co-chaired by Asian Americans Advancing Justice | AAJC and OCA – Asian Pacific American Advocates (OCA), convenes regularly with its members to discuss relevant policy concerns, while also engaging with industry and other stakeholders to raise the visibility of the Asian American community in tech policy and digital civil rights issues. Members of the Asian American Tech Table include The Center for Asian Pacific American Women, Filipina Women's Network, Japanese American Citizens League, Asian Pacific American Institute for Congressional Studies, Council of Korean Americans, Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship, South Asian Americans Leading Together, National Queer Asian Pacific Islander Alliance, and National Council of Asian Pacific Americans. We represent the technology and telecom policy interests of the Asian American community.

Surveillance advertising can be highly invasive and often discriminatory as hoarding personal data and profiling individuals based on their characteristics—including protected traits, such as race, religion, and gender—can harm communities of color, including Asian Americans.

The hallmark of surveillance advertising is targeted advertisements based on the mass collection of personal data. This is inherently discriminatory, but when such advertising shows different individuals different opportunities for housing, employment, and credit opportunities, this results in illegal discrimination. For Asian Americans and other communities of color, the harms of surveillance advertising are especially magnified for those who are limited English proficient (LEP) or have been historically monitored and surveilled. Such individuals are especially vulnerable to privacy invasions, data breaches, and targeted disinformation. It is critical to consider how data collection and use practices have been intentionally manipulated, misused, and biased against these populations throughout history. Data is not neutral; and when decisions are made without addressing the discrimination embedded in the data, the results are inevitably also discriminatory.

In one example from 2015, a study published by ProPublica discovered that Princeton Review charged customers living in areas with a high density of Asian residents more for its online SAT tutoring packages than customers living in other areas. Such customers were 1.8 times as likely to be offered higher prices, regardless of income, meaning that even Asian Americans living in low-income areas were quoted higher prices. For example, in a ZIP code in Flushing, New York, Asians make up 70.5 percent of the population and the median household income in that area is \$41,884—and yet, customers are quoted the highest price of \$8,400 for tutoring services.¹ Asian American consumers' location and race data were used to charge them discriminatory inflated prices for the same service from the same company compared to other customers.

Facebook, Google, and other tech platforms that generate revenue from advertising collect reams of sensitive personal information that can be used to algorithmically classify users based on their location, age, gender, race, and so on. Advocacy and civil rights organizations have long raised the alarm on potential and actual discrimination in advertising through such algorithms, but such concerns remain.

In March 2019, Facebook settled five civil rights lawsuits on advertising discrimination and a year later in August 2020, the platform retired its “multicultural affinity” groups in August 2020 that it previously offered advertisers to target minority users. However, the platform’s four current advertising tools are in some cases even more accurate at identifying users’ race and ethnicity. For example, Facebook’s “Lookalike” audience, which allows advertisers to reach audiences that Facebook deems to be similar to a “Custom” audience that advertisers manually create, significantly overrepresented Asian American audiences above the expected 50% baseline share. In an extreme case, one researcher found a Lookalike audience based on Asian voters with commonly-given Asian names and who live in popular Asian ZIP codes had a sample share of 100% Asians. Racially stereotypical names and ZIP codes can result in even more precise discrimination with Facebook’s “Special Ad” audience, which is ostensibly designed to avoid considering protected characteristics for housing, employment, and credit ads.²

Additionally, racially discriminatory advertising through Facebook’s advertising algorithms exposes Asian Americans and other communities of color to targeted disinformation and controversial political messaging. The surveillance advertising business models that dominate tech platforms also amplify extreme content, promoting real harms of Islamophobia, violence against Asians, and white supremacy.

As companies collect troves of sensitive personal data of its users, much of the data is also for sale, seriously undermining consumer privacy and eroding Fourth Amendment rights. In one startling case, a number of popular Muslim apps worked with X-Mode, a data broker that sold location information to U.S. military contractors and military intelligence. Apps like Muslim Pro, with over 96 million downloads, collected and sold the granular location data of its users, putting Muslim Americans under government surveillance without their knowledge and certainly without their consent.³ In January of 2021, Senator Ron Wyden released a memo revealing that analysts from the Defense Intelligence Agency had searched phone location data five times in the prior two and half years—data that would have otherwise required

¹ <https://www.propublica.org/article/asians-nearly-twice-as-likely-to-get-higher-price-from-princeton-review>

² <https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/>

³ <https://www.vice.com/en/article/epdkze/muslim-apps-location-data-military-xmode>

a warrant to obtain.⁴ **Sensitive personal data for sale endangers not only the privacy of individuals but the civil rights of already surveilled marginalized communities.**

Furthermore, because of language issues, it can be more difficult for LEP users to fully understand and exercise their privacy rights, putting them at increased risk to digital privacy threats. This poses a particular issue for the six million LEP Asian Americans who speak over 100 different languages other than English and who must navigate terms and services, privacy notices, and cookie settings that are already laden with technical jargon and often inaccessible for even English proficient users. Transparency around data practices is necessary for consumers to understand how their sensitive data is being used and to understand the algorithms that determine which advertisements and economic opportunities they are shown. It is also necessary that data transparency information is accessible in non-English languages, so all users can properly exercise their privacy rights.

For Asian Americans and other marginalized communities, the surveillance advertising business model represents a threat not only to our privacy but also our civil rights. Services on major tech platforms may be free but consumers pay a steep price in data breaches, discriminatory advertising, disinformation, and surveillance. Furthermore, as personal user data gathered from one online service can be shared or sold across other platforms and services, such harms multiply throughout the online ecosystem and the dangers of surveillance advertising become almost omnipresent. The Asian American Tech Table therefore urges the FTC to address the harms that surveillance advertising has on our communities and all consumers.

Thank you,

Asian American Tech Table
Asian Americans Advancing Justice - AAJC
OCA - Asian Pacific American Advocates
National Council of Asian Pacific Americans

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<https://int.nyt.com/data/documenttools/dni-to-wyden-on-commercially-available-smartphone-locational-data/5d9f9186c07993b6/full.pdf>