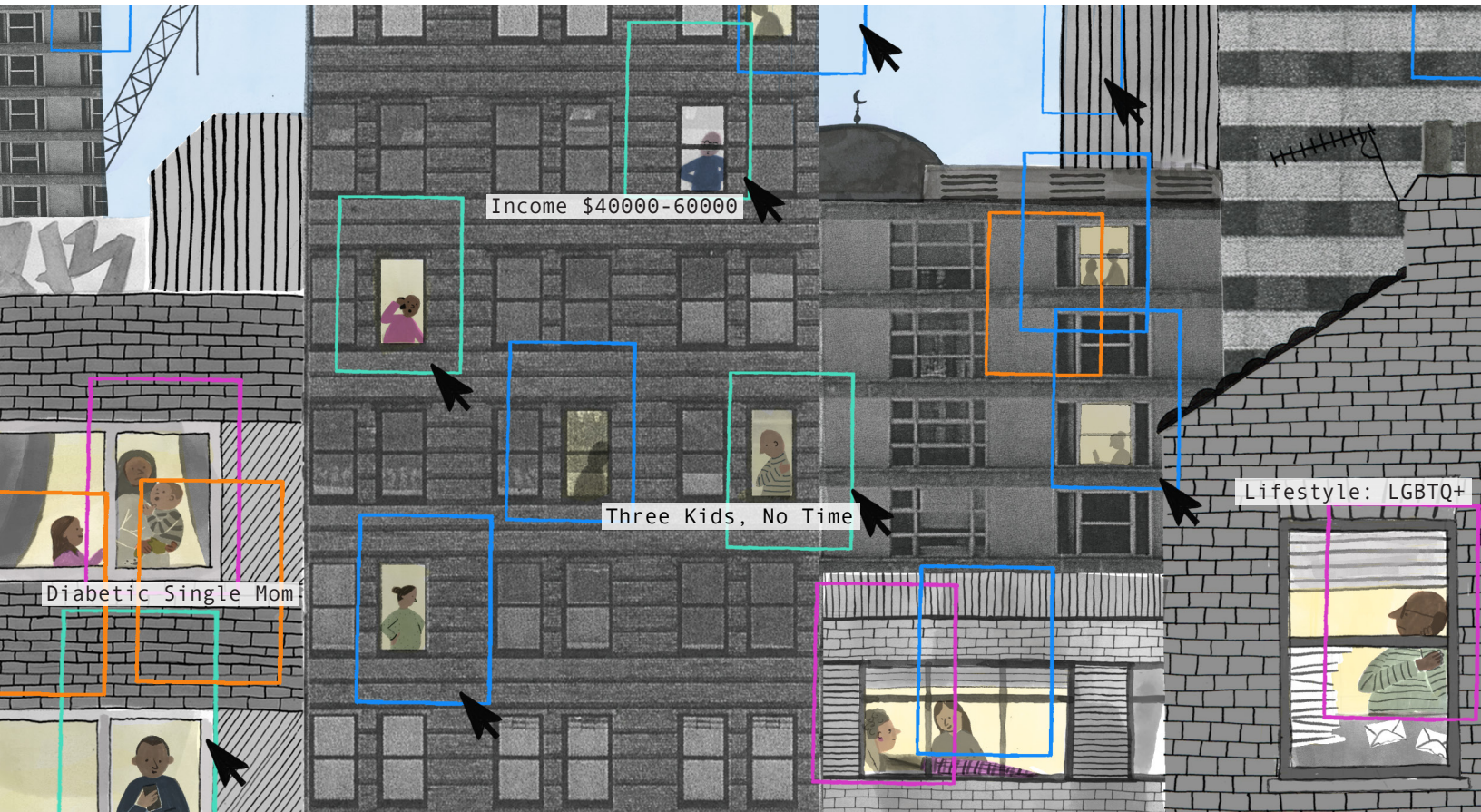


EXPLAINING SURVEILLANCE PRICING AND OTHER DATA-DRIVEN PRICING PRACTICES

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Introduction

The increased use of artificial intelligence (AI) throughout the economy in the midst of an affordability crisis is leaving consumers feeling “helpless” and “fearful.”¹ The desire to exert democratic control over data driven pricing practices is growing. In 2026, over 40 surveillance- and dynamic-pricing bills were introduced in statehouses throughout the U.S., and laws regulating these practices were passed in Connecticut, Maryland, and New Jersey.² But the devil is in the details with definitions, exemptions, and what practices are actually prohibited.³ As algorithmic pricing practices have become more widespread and notorious, the vocabulary describing the various practices is often used loosely or incorrectly. The confusion has even seeped into policy, where certain laws have labeled one practice as another, such as labeling surveillance pricing as dynamic pricing.⁴

The goals of this issue briefing are to provide definitions and examples for pricing-related harms and aggregate real-world examples of surveillance pricing and other predatory data-driven pricing practices. Once advocates and policymakers have a shared vocabulary and understanding of how these practices show up in the real world, facilitating solutions will become a less daunting task.

Key Terms

Algorithmic Pricing

Definition: Algorithmic pricing is an umbrella term for any process that uses automated software to set and adjust the price of products or services. Also called “**data-driven pricing.**”

Surveillance Pricing

Definition: Surveillance pricing means setting different prices for the same good or service based on an individual’s personal data, either on an individual basis or for groups of individuals.⁵ In other words, when businesses set a price for people based on their inferred willingness to pay for a good or service, usually through sophisticated algorithms.

Example: Charging residents of Asian-majority ZIP codes more for test prep services based on a determination they are more willing to pay, a phenomenon ProPublica [reported](#) as early as 2015.⁶

Note: Surveillance pricing can take many forms. For example:

Changing the base price for a good based on the individual shopper’s personal data and willingness to pay.⁷

Displaying a more or less expensive version of a good to a shopper based on their willingness to pay.⁸

Segmenting shoppers based on personal characteristics, then offering targeted prices or targeted discounts to specific segments.⁹

Raising the baseline price for all shoppers, then offering different discounts to different shoppers, so different shoppers pay different amounts.¹⁰

“Personalized pricing” most frequently describes the same practices as surveillance pricing, but is the preferred phrase [over surveillance pricing by current FTC](#) leadership as well as many companies.

Dynamic Pricing

Definition: Dynamic pricing means adjusting prices quickly based on market factors such as changes in supply and demand or internal factors such as a business’s supply levels. This change in price is most frequently based on broader non-personalized sets of data like supply and demand, however the changes can include the use of personal data and happen rapidly.

Example: A parking lot changes prices of the same spot each four-hour period in hard-to-predict ways due to “demand, availability in the wider area, and seasonal trends.”¹¹

Surge Pricing

Definition: Surge pricing is a particularly aggressive form of dynamic pricing. Sometimes these price changes are so dramatic and exploitative that they may qualify as illegal price gouging.

Example: Ride-share app raises prices sharply when it starts raining because bad weather creates higher demand.

Businesses combine these practices in a variety of ways. A price one shopper sees could reflect dynamic pricing, surveillance pricing, and a variety of discounting mechanisms, for example. But it is helpful to think about each pricing practice as a separate mechanism to understand its impact and how to regulate it.

Price Gouging

Definition: Price gouging refers to raising the prices of necessary goods, usually in the wake of an emergency, above and beyond the need to cover increased costs.¹² Price gouging can also refer to sharply raising prices when consumers have few options, such as in airports or sports stadiums.¹³

Example: Retailers during the COVID-19 pandemic sharply raising the prices of hygiene products such as masks and basic food items such as milk above what supply and demand would have predicted.¹⁴

Price discrimination

Definition: Price discrimination refers to any practice, including surveillance pricing, in which a business charges buyers different prices for the same goods or services based on buyers’ willingness to pay.¹⁵

Willingness to pay (WTP)

Definition: Willingness to pay refers to the maximum price at which a specific consumer will buy a product or service at a given time. This is not always simply the amount a consumer can afford—necessity of the product or service and/or a consumer's desperation to obtain it also often factor in. Surveillance pricing algorithms depend on calculating or estimating WTP to set prices.

How Surveillance Pricing Happens:

Step 1: Businesses collect and aggregate data about consumers.

Sometimes, a company collects data directly from users, whether the users know it or not ("first party" data). This includes information companies directly collect from consumers, from the email address you entered when signing up for a loyalty program to every touchscreen gesture you made while scrolling a grocery store's app. First-party data can also include purchase history and other behavioral patterns that the company has directly observed about you, such as what time you shop. These data points enable companies to infer sensitive things about shoppers (see Step 2).¹⁶

Other times, companies acquire "third-party data" from data brokers, which are middleman businesses that aggregate and resell customer data. Data brokers can combine information that they buy, that they collect on their own, and that they obtain from public records (such as voting records) to create personalized profiles of customers or customer segments.¹⁷ That data is then combined with other public data about you, such as what you post about or engage with on social media. Data brokers then sell those profiles to businesses that want to target you or a group you belong to.

Step 2: A business deploys an algorithmic system (sometimes assisted by AI) to process that data and recommend or set a price.

Companies can build or purchase algorithms, or contract with pricing vendors using those algorithms, that process personal information to inform the prices shoppers see.¹⁸ Many of these algorithms do more than just surveillance pricing, also processing data about the season, supply levels, demand for an item, and competitor prices.

These algorithms are sometimes developed in-house; for example, Amazon and Walmart have proprietary algorithms to set prices on their platforms.¹⁹ Sometimes companies develop proprietary algorithms that other businesses can pay to use, such as RealPage's rent-setting algorithm, which landlords have allegedly used to collude to raise rents.²⁰

Collecting Real-World Examples of Surveillance Pricing and Other Predatory Data-Driven Pricing Practices

Surveillance pricing and other predatory forms of algorithmic pricing are widespread but difficult to detect because they are purposely opaque. People shopping online or using data-driven loyalty rewards apps while shopping in person do not have much visibility into how the price they see differs from the prices others are seeing or how quickly it can change. But we know that the practices are common. When the Federal Trade Commission used its investigatory powers to study surveillance pricing in 2024, it asked seven surveillance pricing vendors to disclose their list of clients, which included 250 companies across a broad range of consumer industries.²¹

The mismatch between the scale of the practice and public examples of its usage demonstrates the woeful lack of transparency in this arena. This lack of transparency is one of the biggest challenges preventing meaningful regulatory and legislative action. The public and policymakers deserve to know exactly what pricing practices companies are using, what data is powering those practices, where that data is coming from, and *how* that data is affecting prices.

This paper seeks to help advocates and policymakers by collecting every publicly reported example of surveillance pricing, as well as non-exhaustive examples of other harmful algorithmic pricing practices. In many of these examples, companies claim to have discontinued the cited practices, but the lack of transparency around modern pricing strategies makes their claims impossible to confirm.

Surveillance Pricing Examples

- ***Target raised prices for customers who were less likely to shop around.*** An investigation in Minnesota found that products listed on Target’s app jumped in price when a customer entered the store’s premises,²² presumably based on the inference that customers already at or near the store were less likely to shop around than customers who were at home.
- ***Hotel booking sites raised hotel room prices for shoppers estimated to have more money.*** In February of 2025, SF Gate found that hotel booking sites showed higher prices to travelers from the Bay Area. In one case, there was a \$500 difference between someone searching from the San Francisco area and someone searching from Phoenix.²³ This is similar to when Orbitz detected users who used Apple products and steered them toward more expensive hotels than non-Apple users.²⁴
- ***Insurers charged customers more for insurance based on personal data unrelated to the risk of being insured.*** Insurers have long set individualized rates for customers based on actuarial principles—in other words, based on calculations of actual risk. For example, a person who lives in a hurricane zone may pay more for flood insurance than a person who does not. But some insurers seem to be improperly taking personal characteristics unrelated to the risk of being insured. For example, a 2023 Consumer Federation of America report

found that drivers with perfect driving records but poor credit paid 115% more for auto insurance compared with similar drivers who had excellent credit.²⁵ With “insurance price optimization,” some insurers use hundreds or thousands of personal data points about their customers to estimate their likelihood of accepting a premium increase and not shopping around. Insurers argue that all of this personal data can be correlated to a person’s risk to the insurer, but do not share data sufficient to verify or refute those arguments.

- ***Companies use personal data to offer stingier rewards for more loyal customers.*** Companies often hide surveillance pricing under the guise of loyalty rewards programs, where some customers receive bigger or smaller discounts than others based on an inference about their willingness to pay.²⁶ As one surveillance pricing vendor explained it, they could help companies “avoid over-discounting customers who would have purchased anyway.”²⁷ Starbucks did this – as one Washington Post writer found, the more he shopped there, the fewer discounts he got.²⁸ Modern loyalty rewards programs involve a host of anti-consumer practices, as laid out in depth in *The Loyalty Trap*.²⁹
- ***The Washington Post used readers’ reading preferences to inform what price they pay for a subscription.*** The Washington Post was forced by New York’s transparency law to disclose to readers that it was using their personal data to tailor their subscription prices, leading to an ongoing class action.³⁰
- ***Staples charged shoppers in low-income neighborhoods more for office supplies.*** The price difference seemed to be driven by the calculation that low-income shoppers had fewer competitors to choose from with stores in their neighborhoods.³¹
- ***Rideshare apps like Uber/Lyft are likely engaging in surveillance pricing, potentially around inferences about how desperate a user is for a specific trip, what their willingness to pay is, the power left on their phone battery, and more.*** Many different organizations and researchers who have studied prices on Uber and Lyft’s platforms have shown results consistent with surveillance pricing.³² A study by Consumer Reports, for example, showed that dozens of users requesting the exact same trip within seconds or milliseconds of each other were shown different base rates and discounted rates.³³ The report notes that both companies have filed patents for surveillance pricing technologies.³⁴ Uber and Lyft argue that these differences are due to differences in market conditions, not differences in personal data.
- ***Airline companies allegedly used personal data to change prices.*** When Delta Airlines announced its goal to let artificial intelligence set 20 percent of its prices by the end of 2025,³⁵ the company faced quick backlash from legislators and consumers.³⁶ The airline promptly reassured the public that they would not use AI to set individualized prices,³⁷ but notably did not commit to stop using surveillance data to segment people into groups based on the highest price they are willing to pay. A customer-service response to a Jet Blue customer complaining about higher prices recently went viral for suggesting that the customer reset their browser history or turn on incognito mode, suggesting that surveillance pricing was causing the higher price.³⁸
- ***Instacart ran large-scale pricing experiments on customers’ grocery purchases.*** An investigation of Instacart by Consumer Reports and Groundwork Collaborative found that customers were subject to AI-driven price experimentation that changed prices from

person to person.³⁹ Though Instacart ended the practice after the reporting and denied that it constituted surveillance pricing, the fees charged at the end of a transaction still change from user to user and order to order.

- **A 2014 study of travel and general retail websites detected surveillance pricing on nine out of sixteen websites.** The controlled, peer-reviewed study recruited 300 real participants to determine whether and how surveillance pricing occurred on websites for companies such as Home Depot, Travelocity, Expedia, and more.⁴⁰ The study showed that many of the websites were steering some customers to more expensive options than others or directly changing prices depending on which customer viewed a product.⁴¹
- **People have raised voluminous online complaints about suspected surveillance pricing.** People often report experiencing surveillance pricing on websites such as Reddit.⁴² While not an example of a validated leak or peer-reviewed study, the volume of reports lends support to the idea that surveillance pricing is widespread.

Dynamic/Surge Pricing Examples

- **Amazon periodically changed the prices of commonly bought goods to charge school districts more over time.** Amazon uses surge pricing to increase the amount of money that local government entities such as school systems pay for supplies. By raising and lowering prices in a targeted way with little transparency, customers can be almost guaranteed to pay more over time.⁴³
- **Prices change moment to moment on ridesharing apps like Uber.** Uber has touted its dynamic pricing strategies since it launched in 2009.⁴⁴ Algorithms set fares based on external factors, such as location and time.

Algorithmic Collusion Examples

- **RealPage's algorithmic pricing platform allegedly enabled landlords to quietly collude to raise rents city-wide.** RealPage, a company that provides algorithmic rent-setting software for landlords, was sued by the Department of Justice and a variety of private individuals for enabling its customers to collude to raise rent prices.⁴⁵ By encouraging competing landlords to provide their non-public rent data, using that data to "recommend" rent prices for the landlords, and discouraging the landlords from setting a lower rent than the recommendation, RealPage in essence acted as a collusion broker. The DoJ and RealPage eventually settled the case. RealPage did not admit fault but did agree to "undertake certain actions and refrain from certain conduct."⁴⁶
- **Kalibrate's gas station pricing software allegedly enabled gas stations to collude and raise prices in California.** Much like RealPage, Kalibrate allegedly enabled competitors to pool nonpublic data, receive pricing "suggestions," and punish or discourage competitors from setting lower prices than the recommendation.⁴⁷
- **Amazon's Project Nessie allegedly manipulated retailers into raising prices.**⁴⁸ The Federal Trade Commission and state attorneys general accused Amazon of using its pricing

algorithms and competitor surveillance architecture to incentivize retailers to raise prices on goods. The company would allegedly raise prices and note sellers who sold on its platform who did not do the same on their own websites. It would strip those sellers of the coveted “Buy Box” designation to punish them for not raising prices in lockstep with Amazon, over time teaching them to raise prices when Amazon did.

Conclusion

The field of algorithmic pricing is moving fast and opaquely and likely causing a great deal of consumer harm. We hope that advocates, policymakers, and journalists can benefit from the definitions and examples provided in this issue paper to push for meaningful change.



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