Volume 10, No. 1 | January-February 2027

RAIL

The Journal of Robotics, Artificial Intelligence & Law

Editor's Note: Contrasting Strategies
Victoria Prussen Spears

AI, Intellectual Property, and National Security: Understanding the Administration's Contrasting Strategies
Armin Ghiam and Andre Earls

The Evolving AI Patchwork: Balancing U.S. State Shifts and EU Mandates in Deal Negotiations
David A. Toy, Thomas J. Petrie, and Colin Harris

Adapting Error Resolution to Agentic AI Payments
David A. Stein

AI Is Making Phishing Scams Almost Impossible to Spot—5 Steps Employers Should Take to Combat Latest Threat
Daniel Pepper and Michael Steele

Indian Gaming and Prediction Markets: On a Collision Course?
Blaine I. Green and Allan C. Van Vliet

Prediction Markets Are Creating a New Insider Trading Frontier for Biotech and Pharmaceutical Companies
Chelsea Anderson and Noah Solowiejczyk

CFTC Targets George Santos for Manipulative Trading in State of the Union Event Contract
John C. Murphy, Katherine R. Goldstein, James Joseph Benjamin Jr., Michael A. Asaro, Peter I. Altman, Parvin Daphne Moyne, and Lance Jasper

Different Shoppers, Different Prices: The Federal Trade Commission Takes Aim at Personalized Pricing
Allyson L. Chavez, Anna M. Behrmann, and Kathy L. Osborn

Third Circuit Revives Algorithmic Price-Fixing Suit Against Atlantic City Hotels
Alexis Gilman and Drew Wilson

Model Cloning of a Competitor's AI: Fair Competition or Potential Liability?
Brian W. Nolan, Reginald R. Goeke, Adam S. Hickey, Thea Kendler, and Micheal Antifaoff

Automating the Impact Assessment, and the Limits of AI Compliance
Adilson Fernandes Braga Junior

The UK ICO's New Statutory Duty to Produce an AI Code of Practice: What It Means for Businesses That Use AI
James Castro-Edwards

FULL COURT PRESS
part of Clio

RAIL
The Journal of Robotics, Artificial Intelligence & Law
Volume 10, No. 1 | January–February 2027

7 **Editor's Note: Contrasting Strategies**
Victoria Prussen Spears

11 **AI, Intellectual Property, and National Security: Understanding the Administration's Contrasting Strategies**
Armin Ghiam and Andre Earls

17 **The Evolving AI Patchwork: Balancing U.S. State Shifts and EU Mandates in Deal Negotiations**
David A. Toy, Thomas J. Petrie, and Colin Harris

23 **Adapting Error Resolution to Agentic AI Payments**
David A. Stein

33 **AI Is Making Phishing Scams Almost Impossible to Spot—5 Steps Employers Should Take to Combat Latest Threat**
Daniel Pepper and Michael Steele

37 **Indian Gaming and Prediction Markets: On a Collision Course?**
Blaine I. Green and Allan C. Van Vliet

43 **Prediction Markets Are Creating a New Insider Trading Frontier for Biotech and Pharmaceutical Companies**
Chelsea Anderson and Noah Solowiejczyk

49 **CFTC Targets George Santos for Manipulative Trading in State of the Union Event Contract**
John C. Murphy, Katherine R. Goldstein, James Joseph Benjamin Jr., Michael A. Asaro, Peter I. Altman, Parvin Daphne Moyne, and Lance Jasper

55 **Different Shoppers, Different Prices: The Federal Trade Commission Takes Aim at Personalized Pricing**
Allyson L. Chavez, Anna M. Behrmann, and Kathy L. Osborn

61 **Third Circuit Revives Algorithmic Price-Fixing Suit Against Atlantic City Hotels**
Alexis Gilman and Drew Wilson

67 **Model Cloning of a Competitor's AI: Fair Competition or Potential Liability?**
Brian W. Nolan, Reginald R. Goeke, Adam S. Hickey, Thea Kendler, and Micheal Antifaoff

75 **Automating the Impact Assessment, and the Limits of AI Compliance**
Adilson Fernandes Braga Junior

85 **The UK ICO's New Statutory Duty to Produce an AI Code of Practice: What It Means for Businesses That Use AI**
James Castro-Edwards

EDITOR-IN-CHIEF

Steven A. Meyerowitz
President, Meyerowitz Communications Inc.

EDITOR

Victoria Prussen Spears
Senior Vice President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Jennifer A. Johnson
Partner, Covington & Burling LLP

Paul B. Keller
Partner, Allen & Overy LLP

Garry G. Mathiason
Shareholder, Littler Mendelson P.C.

James A. Sherer
Partner, Baker & Hostetler LLP

Elaine D. Solomon
Partner, Blank Rome LLP

Edward J. Walters
Chief Strategy Officer, vLex

John Frank Weaver
Director, McLane Middleton, Professional Association

THE JOURNAL OF ROBOTICS, ARTIFICIAL INTELLIGENCE & LAW (ISSN 2575-5633 (print) /ISSN 2575-5617 (online) at $495.00 annually is published six times per year by Full Court Press, an imprint of Clio and Themis Solutions, Inc..
Copyright 2027 Full Court Press, an imprint of Clio and Themis Solutions, Inc. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. For customer support, please contact Full Court Press, 202.999.4777 (phone), or email customer service at support@fastcase.com.

Publishing Staff
Publisher: David Nayer
Production Editor: Sharon D. Ray
Cover Art Design: Juan Bustamante

Cite this publication as:

The Journal of Robotics, Artificial Intelligence & Law (Full Court Press)

This publication is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2027 Full Court Press, an imprint of Clio and Themis Solutions, Inc.

All Rights Reserved.

A Full Court Press, Clio, Publication

https://www.fastcase.com/

Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541.

Material for publication is welcomed—articles, decisions, or other items of interest to attorneys and law firms, in-house counsel, corporate compliance officers, government agencies and their counsel, senior business executives, scientists, engineers, and anyone interested in the law governing artificial intelligence and robotics. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the Editorial Content appearing in these volumes or reprint permission, please contact:

David Nayer, Publisher, Full Court Press at david.nayer@clio.com or at 202.999.4777

For questions or Sales and Customer Service:

Customer Service
Available 8 a.m.–8 p.m. Eastern Time
866.773.2782 (phone)
support@fastcase.com (email)

Sales
202.999.4777 (phone)
sales@fastcase.com (email)

ISSN 2575-5633 (print)
ISSN 2575-5617 (online)

Different Shoppers, Different Prices: The Federal Trade Commission Takes Aim at Personalized Pricing

Allyson L. Chavez, Anna M. Behrmann, and Kathy L. Osborn*

In this article, the authors review a new rule proposed by the Federal Trade Commission that would require companies that engage in personalized pricing to disclose that practice to consumers.

The Federal Trade Commission (FTC) has proposed a sweeping new policy that could reshape how businesses price goods and services online. The proposed rule[1] would require companies that engage in personalized pricing to "clearly and conspicuously disclose" the practice to consumers and share the types of data used to set individualized prices. FTC Chairman Andrew Ferguson framed the proposal in consumer-trust terms: "When consumers see a listed price, they expect it to be the same price that everyone else sees, not the retailer's estimate of how much they are willing to pay based on their personal data."

Importantly, the proposal, rooted in Section 5 of the Federal Trade Commission Act,[2] does not ban personalized pricing outright. Instead, the FTC concluded that failing to disclose the practice and its underlying data inputs may constitute an unfair or deceptive act.

What the FTC Proposed

The FTC's proposal establishes a disclosure obligation that requires businesses that charge different prices to different consumers based on personal data to (1) clearly disclose that fact to consumers before a purchase, and (2) identify the categories of data used in pricing decisions. The FCT has acknowledged that it lacks the statutory authority to ban the practice entirely under Section 5, but it has asserted that nondisclosure of material pricing practices

Robotics, Artificial Intelligence & Law / January-February 2027, Vol. 10, No. 1, pp. 55-60
© 2027 Full Court Press. All rights reserved
ISSN 2575-5633 (print) /ISSN 2575-5617 (online)

is deceptive within the meaning of the statute. This approach mirrors prior FTC actions in the data privacy space, where disclosure failures have served as the predicate for enforcement.

How Technology Changes Prices Online Versus in Physical Stores

A physical shelf displays the same price to every consumer who walks past. Online retail operates fundamentally differently. Algorithms can adjust prices, product rankings, promotions, and offers in real time based on individual consumer profiles. This means two consumers visiting the same retailer's website at the same moment may see different prices for identical products. The FTC's January 2025 preliminary report on surveillance pricing[3] confirmed that grocers, apparel companies, and other retailers are actively using third-party data intermediaries to individualize online prices. The report was based on the examination of documents obtained from intermediary firms that provide data analytics, pricing optimization, and consulting services to retailers. Staff found that these intermediaries worked with at least 250 clients selling goods and services ranging from grocery to apparel, and that the tools they offer have the capability to generate "higher priced products based on consumers' search and purchase activity." The report found that companies rely on consumer location, browsing histories, time spent on product pages, and items left in shopping carts to calibrate pricing in ways that would be impossible in a brick-and-mortar environment.

What Data Is Tracked

The scope of consumer data feeding pricing algorithms is broad. According to the FTC's findings,[4] companies track browsing history, search queries, click patterns, cart abandonment behavior, purchase history, account and loyalty program status, geographic location, device information, time of visit, and repeat visit frequency. Beyond directly observed behavior,[5] companies also use this data to infer characteristics such as household income, urgency of need, price sensitivity, and overall willingness to pay. These inferred attributes often drive the most significant pricing differentials.

The Loyalty Program Gray Area

One of the most significant open questions involves the boundary between legitimate loyalty discounts and exploitative personalization. In a traditional loyalty program, the consumer opts in, sees a baseline price, and receives a clearly stated benefit in exchange for participation. The consumer understands the terms, can compare the member price to the standard price, and makes an informed decision about whether to join.

Personalized pricing operates differently.[6] Algorithms may identify consumers who appear less price-sensitive and adjust their prices upward, without any transparent baseline or opt-in mechanism. The consumer never learns that someone else saw a lower cost for the same product at the same time.

Consider the parent searching for a children's thermometer at 3 a.m. Pricing algorithms can infer urgency from the time of purchase and browsing behavior, potentially resulting in a higher price precisely when the consumer is least able to comparison shop. The consumer has no way to know that the same thermometer was available for a lower price six hours earlier, or that another shopper in a different behavioral profile would see a reduced price at that same moment.

The FTC's proposal does not draw a bright line between these scenarios. It does not specify how much personalization transforms a loyalty benefit into a deceptive practice, nor does it define when inferred urgency crosses from legitimate market responsiveness into exploitation. We anticipate these interpretive questions will be central to any eventual enforcement action or rulemaking.

Industries in the Government's Crosshairs

The FTC's investigative work and public statements seem to have focused on three sectors: grocery, apparel, and broader e-commerce. The January 2025[7] report specifically examined companies in these industries that used third-party surveillance pricing services. Retailers in these sectors should assume they face heightened scrutiny, particularly those with significant online sales channels and sophisticated data collection infrastructure. The FTC's proposed policy statement underscores the point by

offering hypothetical examples of scenarios that would raise Section 5 concerns. These include:

- A food delivery company quoting a higher price to consumers based on data suggesting they are less likely or unable to leave their homes to purchase food;
- A grocery chain charging a delivery customer a higher price for milk based on data showing that several children live in the customer's household;
- A hotel charging a higher price based on data indicating the consumer is traveling for a funeral or other "can't miss" personal event;
- A rideshare company charging a user more because data reveals they have not installed any competitor apps on their phone;
- A rideshare company charging more for transport to a medical facility based on data suggesting the user has a life-threatening medical emergency;
- A retailer charging more for a home-security camera system based on court filings indicating the customer was recently a crime victim; and
- A retailer charging more on its website based on data revealing the consumer is currently inside one of the retailer's physical stores or parking lots while browsing online.

The FTC noted these are hypothetical illustrations "presented for discussion purposes only," but they provide an indication of the type of conduct most likely to attract enforcement attention.

Industry trade groups, including the National Retail Federation,[8] the Food Marketing Institute,[9] and the Retail Industry Leaders Association,[10] have pushed back on the proposal, arguing that retailers do not use personal data to increase prices and that legitimate loyalty programs would be chilled by overly broad disclosure requirements.

State Legislative Landscape

The FTC's action arrives against a backdrop of significant state-level activity.[11] Maryland[12] and New Jersey[13] have enacted legislation banning personalized pricing in the grocery sector, while Connecticut's law[14] applies more broadly to retailers and

third-party delivery services. New York's Algorithmic Pricing Disclosure Law[15] is now in effect, and California's Assembly Bill 2564,[16] which would impose sweeping restrictions on "surveillance pricing," is still pending adoption. Companies operating across multiple states face a patchwork compliance challenge: even if the FTC's proposal remains disclosure-based at the federal level, state laws may prohibit the practice outright in certain sectors or jurisdictions. Multistate retailers should evaluate their pricing practices against both the proposed federal framework and the rapidly evolving state landscape.

What Businesses Should Do Now

- *Audit Current Pricing Practices*. Identify whether algorithms adjust prices based on individual consumer data (as distinct from market-wide supply and demand factors).
- *Map Data Inputs*. Document the categories of consumer data flowing into pricing decisions, including data obtained from third-party intermediaries.
- *Evaluate Loyalty Programs*. Assess whether loyalty or membership programs use data in ways that go beyond providing stated discounts to enrolled consumers.
- *Monitor State Developments*. Track pending legislation in California, New York, and other states where personalized pricing restrictions are advancing.
- *Engage Outside Counsel*. Companies in the grocery, apparel, and e-commerce sectors should consult with counsel experienced in FTC enforcement and consumer protection to assess exposure and develop a compliance roadmap.

Notes

* The authors, attorneys with Faegre Drinker Biddle & Reath LLP, may be contacted at allyson.chavez@faegredrinker.com, anna.behrmann@faegredrinker.com, and kathy.osborn@faegredrinker.com, respectively.

1. https://www.pbs.org/newshour/nation/ftc-proposal-would-require-retailers-to-be-transparent-about-personalized-pricing.
2. 15 U.S.C. § 45.
3. https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer.

4. https://www.ftc.gov/system/files/ftc_gov/pdf/p246202_surveillancepricing6bstudy_researchsummaries_redacted.pdf.

5. https://fpf.org/resource/data-driven-pricing-key-technologies-business-practices-and-policy-implications/.

6. https://epic.org/wp-content/uploads/2026/08/explaining-surveillance-pricing-2026.pdf.

7. https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer#:~:text=The%20FTC%20staff%20found%20that%20the%20intermediaries%20worked%20with%20at%20least%20250%20clients%20that%20sell%20goods%20or%20services%20ranging%20from%20grocery%20stores%20to%20apparel%20retailers.%C2%A0The%20FTC%20found%20that%20widespread%20adoption%20of%20this%20practice%20may%20fundamentally%20upend%20how%20consumers%20buy%20products%20and%20how%20companies%20compete.#:~:text=The%20FTC%20staff%20found%20that%20the%20intermediaries%20worked%20with%20at%20least%20250%20clients%20that%20sell%20goods%20or%20services%20ranging%20from%20grocery%20stores%20to%20apparel%20retailers.%C2%A0The%20FTC%20found%20that%20widespread%20adoption%20of%20this%20practice%20may%20fundamentally%20upend%20how%20consumers%20buy%20products%20and%20how%20companies%20compete.

8. https://chaindrugreview.com/nrf-defends-data-driven-pricing-and-loyalty-programs/.

9. https://www.fmi.org/newsroom/news-archive/view/2026/08/04/fmi-response-to-senate-ai-surveillance-pricing-hearing.

10. https://www.rila.org/focus-area/public-policy/retail-policy-framework/supporting-free-markets-and-fair-trade/retail-privacy.

11. https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/states-are-cracking-down-on-algorithmic-pricing-are-you-ready.

12. https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0895?ys=2026RS.

13. https://www.nj.gov/governor/news/2026/20260723a.shtml.

14. https://cga.ct.gov/2026/ACT/PA/PDF/2026PA-00130-R00HB-05563-PA.PDF.

15. https://newyork.public.law/laws/n.y._general_business_law_section_349-a.

16. https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202520260AB2564&showamends=false.