



6 June 2022

Office of the Australian Information Commissioner  
Via email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

Dear Commissioner,

**RE: Airbnb's breaches of the *Privacy Act 1988***

I write in regard to Airbnb's collection of sensitive information from third parties about users of its service, as well as the use of this information in Airbnb's automated decision making (ADM) tool to determine the 'trustworthiness' of its users.

CHOICE asks the Commissioner to investigate Airbnb for breaches of the *Privacy Act 1988* (**'the Act'**) in relation to Australian Privacy Principles (APP) 3 and 10, specifically:

- APP 3.2 - the reasonably necessary collection of personal information,
- APP 3.3 - the reasonably necessary collection of sensitive information,
- APP 3.5 - the collection of personal information by lawful and fair means,
- APP 3.6 - the collection of information directly from the individual,
- APP 10.1 - reasonable steps taken to ensure the personal information collected is accurate, up-to-date and complete, and
- APP 10.2 - reasonable steps taken to ensure the personal information used is accurate, up-to-date, complete and relevant.

Online products and services increasingly collect and use consumer data, often without the knowledge or appropriate consent of the consumer. CHOICE is concerned that Airbnb, a popular online accommodation platform, has collected sensitive information on its users ('guests' and 'hosts') through third parties, including social media platforms such as Facebook and LinkedIn, without explicit notice and consent.

Further to this, CHOICE is concerned that Airbnb is using this sensitive information in an algorithm which determines the 'trustworthiness' or suitability of its users. This ADM tool then determines whether users can access Airbnb's service, blocking users it deems unsuitable.

CHOICE finds issue with Airbnb's practices for two main reasons:

1. **Lack of notice and consent in the collection of information:** Airbnb is collecting information about its users from third parties without seeking consent from those individuals. Airbnb has not been transparent in its description of how its users' personal, including sensitive information, will be collected and used when they agree to use the service. This diminishes the individual's control over their data and privacy.
2. **Profiling and discrimination:** Airbnb is using the sensitive information, collected without meaningful consent, in its ADM tool to make assessments of its users' suitability. Without sufficient transparency and explainability, Airbnb may be engaging in profiling and discriminatory practices through its ADM tool.

## CHOICE's investigation

In March 2022, CHOICE published its investigation into Airbnb's use of ADM.<sup>1</sup> The investigation found that Airbnb has bought an algorithm to score users' 'trustworthiness' based on publicly available data. It also found that some users in Australia have been banned from the platform, but the company is vague on how it applies the ADM tool in this market.

## Airbnb's ADM tool

In 2017, Airbnb acquired a tech startup called Trooly which specialised in background checks and had earlier patented an algorithm that gathered publicly and privately available data on users to give them a 'trustworthiness' score. Airbnb has updated the patent, which it owns directly, several times since 2017. This suggests it is using and developing the algorithm.

The patented algorithm is claimed to assess people's personality traits, such as narcissism or conscientiousness, along with behavioural traits, such as use of drugs or alcohol or involvement in civil litigation and other behaviour, and combine them to create a holistic score that judges a person's trustworthiness.<sup>2</sup> The ADM tool assesses people's personality traits through analysing a user's 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>3</sup>

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<sup>1</sup> Blakkarly, J 2022, *Is Airbnb using an algorithm to ban users from the platform?*, CHOICE, [www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/airbnb-banning-users](http://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/airbnb-banning-users)

<sup>2</sup> Baveja et al, 2019, *Determining trustworthiness and compatibility of a person*, US 2019 / 0073597 A1, <https://patentimages.storage.googleapis.com/cd/e8/8c/22a7a7066da433/US20190073597A1.pdf>

<sup>3</sup> Baveja et al, 2019, *Determining trustworthiness and compatibility of a person*, US 2019 / 0073597 A1, <https://patentimages.storage.googleapis.com/cd/e8/8c/22a7a7066da433/US20190073597A1.pdf>, p 2.

## Airbnb's privacy policy

Airbnb's privacy policy includes a broad statement that indicates the ADM tool may be in use in Australia.<sup>4</sup> It states:

"We may conduct profiling based on your interactions with the Airbnb Platform, your profile information and other content you submit to Airbnb, and information obtained from third parties. In limited cases, automated processes, which analyze your account and activities on the Airbnb platform as well as *information in relation to activities on and off the Airbnb platform that can be associated with you*,<sup>5</sup> could restrict or suspend access to the Airbnb Platform if such processes detect activity that may pose a safety or other risk to Airbnb, our community, or third parties. If you would like to challenge decisions based on automated processes, please contact us via the Contact Information section below."

## Breaches of the Act - APP 3

### **'Reasonably necessary' collection of personal information**

Airbnb's privacy policy states that its ADM tool can analyse 'information in relation to activities on and off the Airbnb platform that can be associated with you'. CHOICE argues that Airbnb's collection of personal information pertaining to its users from third parties is not reasonably necessary to carry out Airbnb's functions or activities. Airbnb collecting information such as an individual's employment and education history, social media connections and posts, and public records such as marriage certificates, property records, or arrest reports<sup>6</sup> are not necessary to determine whether a user is suitable to use or provide accommodation services through the platform.

### **Collection of sensitive information**

In the course of CHOICE's investigation, we heard from one user of Airbnb who has been excluded from the platform. Airbnb sent Rick Andrews (not his real name) an email saying his account had been flagged during a "standard security review". The email read:

"It turned out that your account was linked to activity that goes against our Terms of Service, specifically it was linked to online ads for adult services, which can include escort activity and commercial pornography."

CHOICE asserts that in order to make such an assessment, Airbnb has been collecting sensitive information about individuals' sexual orientation or practices, as well as membership of a professional association, without obtaining their prior consent. We are equally concerned that Airbnb is banning users from its platform based on their occupation using this sensitive information.

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<sup>4</sup> Airbnb 2022, 3.2 Create and Maintain a Trusted and Safer Environment, *Privacy Policy - Asia Pacific (Excluding China)*, February 10, accessed on 9 May 2022, <https://www.airbnb.com.au/help/article/3175/privacy-policy>

<sup>5</sup> Emphasis added.

<sup>6</sup> Baveja et al, 2019, *Determining trustworthiness and compatibility of a person*, US 2019 / 0073597 A1, <https://patentimages.storage.googleapis.com/cd/e8/8c/22a7a7066da433/US20190073597A1.pdf>, p 3.

### **Collection of personal information by lawful and fair means**

CHOICE is concerned that Airbnb's collection of personal information on its users is neither fair nor lawful. Its collection of sensitive information, such as sexual practices, and occupation has been used for the unlawful purpose of discrimination. The Scarlet Alliance, the national representative body for sex workers, and Sex Work Law Reform Victoria claim that they have seen a large number of cases of sex workers being banned from Airbnb.<sup>7</sup> For these users, Airbnb has provided no explanation, query process or transparency in relation to their exclusion from the service.

Airbnb's collection of its users' personal information via its ADM tool is equally unfair and intrusive, as unnecessary and irrelevant information such as blog posts, employment history and marital status are covertly collected from third parties without the knowledge of the individual.

### **Collection of information directly from the individual**

Airbnb has sought to access information about users of its service from third parties via its ADM tool. This information - if it were reasonably necessary to provide Airbnb's service - could have been solicited from the individual directly. However, the reasonable person would likely query the relevance of their Facebook friends or employment history in determining whether they should be allowed to stay at or provide accommodation. We argue that no individual would reasonably expect personal information about them, such as those described, to be collected from another source (e.g. Facebook, criminal records) in order to use the Airbnb platform.

## **Breaches of the Act - APP 10**

### **Reasonable steps to ensure the quality of personal information**

It is uncertain whether Airbnb has taken reasonable steps to ensure the quality of the personal information it collects and uses via its ADM tool is accurate, up-to-date, complete and relevant. The collection and use of poor quality or irrelevant personal information, including sensitive information on sexual practices, has significant privacy impacts for users of its service. CHOICE is concerned that Airbnb is using poor quality information to bar people from its services without having ensured the accuracy of the information it is using to make these assessments. CHOICE is not aware of Airbnb contacting individuals to verify the quality of personal information when it is used or disclosed.

### **Airbnb's response**

CHOICE has corresponded with Airbnb Australia to find out more about the way its ADM tool is being used.<sup>8</sup> Airbnb's response was as follows:

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<sup>7</sup> Blakkarly, J 2022, *Is Airbnb using an algorithm to ban users from the platform?*, CHOICE, [www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/airbnb-banning-users](http://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/airbnb-banning-users)

<sup>8</sup> Correspondence sent to Airbnb Australia on 3 September 2021 via email. Response received on 15 September 2021 via email.

*"The safety, security and privacy of our community is one of our top priorities. Our platform security and safety measures are designed to help ensure stays are safe and positive experiences for Hosts, guests and the wider community – while also protecting users' information, including their personal information."*

**Desired outcomes**

CHOICE urges the Commissioner to investigate this matter further to ensure that Airbnb does not breach the privacy of users of its service and misuse sensitive information for discriminatory purposes. For further information, please contact us on 02 9577 3376 or via [apereira@choice.com.au](mailto:apereira@choice.com.au).

Yours sincerely,

A handwritten signature in black ink that reads "APereira". The letters are cursive and somewhat stylized.

Amy Pereira  
Senior Campaigns and Policy Adviser  
**CHOICE**