



MEMORANDUM

December 7, 2021

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Legislative Hearing on “Holding Big Tech Accountable: Legislation to Build a Safer Internet”

On **Thursday, December 9, 2021, at 10:30 a.m. (EST), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing**, the Subcommittee on Consumer Protection and Commerce will hold a legislative hearing entitled, “Holding Big Tech Accountable: Legislation to Build a Safer Internet.”

I. BACKGROUND¹

Social media has become a major source of news, information, and advertising. Research indicates that seven in ten Americans use social media platforms, with Facebook (now rebranded as Meta) and YouTube being the most popular overall.² Social media platforms can be used as a source of entertainment, a place to connect with friends and family, a news source, and for advertising.³ Some argue that social media platforms can also be used nefariously and cause harm to users through the decisions the platforms make regarding how to display content including targeting, ordering or recommending certain content over other content.⁴

According to a 2021 Anti-Defamation League survey, 41 percent of Americans experienced online harassment over the past year, with 27 percent experiencing severe online harassment, which includes “sexual harassment, stalking, physical threats, swatting, doxing and

¹ For additional background information, please see the Majority memo from the December 1, 2021, Communications and Technology Subcommittee hearing entitled “Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity.”

² Pew Research Center, *Social Media Use in 2021* (Apr. 7, 2021) (www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/).

³ Pew Research Center, *Social Media Fact Sheet* (Apr. 7, 2021) (www.pewresearch.org/internet/fact-sheet/social-media/).

⁴ *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, Wall Street Journal (Sept. 14, 2021) (www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739).

sustained harassment.”⁵ Studies show that platforms have used algorithms to target advertisements related to employment, housing, and credit in a discriminatory manner.⁶ Inappropriate content has appeared on video websites intended for children, including children’s characters in violent or sexual situations, conspiracy theory videos, and other age-inappropriate content.⁷ Internal company documents have also demonstrated that Facebook executives knew that the content on its platform, Instagram, was “toxic” for teenage girls, leading them to having eating disorders and suicidal thoughts, but the company did nothing to address it.⁸

II. LEGISLATION

A. **H.R. 3451, the “Social Media Disclosure And Transparency of Advertisements Act of 2021” or the “Social Media DATA Act”**

H.R. 3451, the “Social Media DATA Act,” introduced by Reps. Trahan (D-MA) and Castor (D-FL), requires the Federal Trade Commission (FTC) to issue regulations that require large digital advertising platforms to maintain and grant academic researchers and the FTC access to ad libraries that contain specific data on advertisements in a searchable, machine-readable format. The ad library must include details about the advertisements such as the ad targeting method, descriptions of the targeted audience for each advertisement, and the language contained within the ad. The bill also requires the FTC to convene a working group of stakeholders to provide guidance to Congress and the public on a set of best practices for social media research.

B. **H.R. 3611, the “Algorithmic Justice and Online Platform Transparency Act”**

H.R. 3611, the “Algorithmic Justice and Online Platform Transparency Act,” introduced by Rep. Matsui (D-CA), prohibits online platforms from using an algorithmic process in a manner that is not safe and effective, i.e., in a manner that harms users or fails to take reasonable steps to ensure algorithms achieve their intended purposes. The bill also prohibits the use of algorithmic processes that discriminate based on race, age, gender, ability, and other protected characteristics. The bill further requires platforms to describe to users the types of algorithmic processes they use and to maintain detailed records describing these processes for review by the FTC. The bill also creates an inter-agency task force to examine discriminatory algorithmic processes.

⁵ Anti-Defamation League, *Online Hate and Harassment: The American Experience 2021* (Mar. 2021) (www.adl.org/online-hate-2021).

⁶ Pauline T. Kim, *Manipulating Opportunity*, Virginia Law Review (June 1, 2020); Olivier Sylvain, *Discriminatory Designs on User Data*, Knight First Amendment Institute at Columbia University (Apr. 1, 2018).

⁷ *On YouTube Kids, Startling Videos Slip Past Filters*, New York Times (Nov. 4, 2017); *The YouTube Kids App Has Been Suggesting a Load of Conspiracy Videos to Children*, Business Insider (Mar. 17, 2018).

⁸ See note 3.

C. H.R. 3991, “Telling Everyone the Location of data Leaving the U.S. Act” or the “TELL Act”

H.R. 3991, the “TELL Act,” introduced by Rep. Duncan (R-SC), requires a person who maintains a website or sells or distributes a mobile app that stores information collected from the website or app in the People’s Republic of China to disclose to users that such information is stored in the People’s Republic of China.

D. H.R. 4000, “Internet Application Integrity and Disclosure Act” or the “Internet Application I.D. Act”

H.R. 4000, the “Internet Application I.D. Act,” introduced by Rep. Kinzinger (R-IL), requires a person who maintains a website or sells or distributes a mobile app that is owned, wholly or partially, by the Chinese Communist Party or by a non-state owned entity located in the People’s Republic of China to disclose that ownership to the user.

E. H.R. 5439, the “Kids Internet Design and Safety Act” or the “KIDS Act”

H.R. 5439, the “KIDS Act,” introduced by Reps. Castor, Clarke (D-NY), Trahan, and Wexton (D-VA), creates new protections for online users under the age of 16 by banning certain design features directed at children, such as auto-play or features encouraging the user to spend money on the platform. The bill also prohibits the amplification of harmful content to children and requires websites to create mechanisms for users to report instances of harmful content. Finally, it prohibits websites from participating in manipulative marketing to users under the age of 16.

F. H.R. 6083, the “Deceptive Experiences To Online Users Reduction Act” or the “DETOUR Act”

H.R. 6083, the “DETOUR Act,” introduced by Reps. Blunt Rochester (D-DE) and Gonzalez (R-OH), prohibits large online operators from manipulating their products to mislead users into providing personal information or giving consent. The bill further prohibits these operators from studying the behavioral patterns of subsets of users without first obtaining informed consent or designing products directed to children that lead to an increase in the use of products. The bill also requires large online operators conducting psychological or behavioral research to disclose certain information, discontinue such research if consent was improperly acquired, and establish an independent review board.

G. H.R. 6093, the “FTC Whistleblower Act of 2021”

H.R. 6093, the “FTC Whistleblower Act of 2021,” introduced by Reps. Schakowsky (D-IL) and Trahan, prohibits retaliation against any individual who makes a covered disclosure to specified entities, participates in a federal government investigation or proceeding, or refuses to participate in activities the individual reasonably believes may violate any law or regulation enforced by the FTC. The bill allows whistleblowers to enforce these rights in federal court and

establishes an awards program for whistleblowers. Under the bill, the FTC may bring enforcement actions against entities attempting to interfere with individuals exercising these rights.

III. WITNESSES

The following witnesses have been invited to testify:

Jonathan Greenblatt
CEO and National Director
Anti-Defamation League

Nathalie Maréchal, Ph.D.
Senior Policy & Partnerships Manager
Ranking Digital Rights

Imran Ahmed
CEO
Center for Countering Digital Hate

Josh Golin
Executive Director
Fairplay

Rick Lane
CEO
Iggy Ventures LLC

Jessica Rich
Of Counsel
Kelley Drye
Former Director
Bureau of Consumer Protection, Federal Trade Commission