



MEMORANDUM

February 25, 2022

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 Protect Online Users”

On **Tuesday, March 1, 2022, 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 Protect Online Users.”

I. BACKGROUND¹

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 Scholars have found that platforms sharing data with advertisers can have a discriminatory impact on housing,

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).

employment, and credit decisions.⁵ It can also lead to employment exclusions based on gender.⁶

Outside of advertising, the way content is displayed or targeted can also impact users' experience online. 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 sustained harassment."⁷ 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.⁸ Sexual assault and harassment continues to occur as platforms spread their reach to virtual reality.⁹

Platforms and companies that employ machine learning and automated systems to make decisions about users have also been shown to impact individual health outcomes and approvals for home loans.¹⁰

II. LEGISLATION

A. H.R. 6416, the "Banning Surveillance Advertising Act of 2022"

H.R. 6416, the "Banning Surveillance Advertising Act of 2022," introduced by Reps. Eshoo (D-CA), Schakowsky (D-IL), and Rush (D-IL), prohibits advertisers from targeting advertisements based on personal information that links the consumer to the consumer's connected device, this includes inferred and derived data, contents of communications, internet browsing history, and advertising identifiers. Contextual advertising is allowable under the bill. In addition, advertisements cannot be targeted based on information purchased or obtained through a third party or based on information that identifies the consumer as a member of a protected class. The bill includes a private right of action for harmed consumers.

⁵ 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); *Facebook Engages in Housing Discrimination With Its Ad Practices*, U.S. Says, New York Times (Mar. 28, 2019).

⁶ *Study: Facebook Delivers Biased Job Ads, Skewed by Gender*, Associated Press (Apr. 9, 2021).

⁷ Anti-Defamation League, *Online Hate and Harassment: The American Experience 2021* (Mar. 2021) (www.adl.org/online-hate-2021).

⁸ *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).

⁹ *The Metaverse's Dark Side: Here Come Harassment and Assaults*, New York Times (Dec. 30, 2021).

¹⁰ *The Pain Was Unbearable. So Why Did Doctors Turn Her Away?*, WIRED (Aug. 11, 2021); *The Secret Bias Hidden in Mortgage-Approval Algorithms*, The Markup (Aug. 25, 2021).

B. H.R. 6580, the “Algorithmic Accountability Act of 2022”

H.R. 6580, the “Algorithmic Accountability Act of 2022,” introduced by Rep. Clarke (D-NY), requires companies that use automated decision-making systems to conduct impact assessments on those systems and regularly report their results to the Federal Trade Commission (FTC). Metrics to be included in these assessments include testing and evaluation of performance of systems before and after deployment; evaluation of the rights of consumers, including whether a consumer may contest, correct, or appeal decision or opt out of the system; and documentation of data or other input information used for developing these systems. Under the bill, companies can document which of the requirements of the impact assessments were not possible to conduct in order for the FTC to continue to update these requirements through rulemaking.

The bill also requires the FTC to publish an annual report on these results and store this data in a publicly accessible database. To assist the FTC with this mission, the bill establishes a 50-person Bureau of Technology at the agency.

C. H.R. 6755, the “Cooperation Among Police, Tech, and Users to Resist Exploitation Act” or the “CAPTURE Act”

H.R. 6755, the “CAPTURE Act,” introduced by Rep. Bilirakis (R-FL), requires the Comptroller General of the United States to study and report to Congress on: how social media companies communicate, consult, and coordinate with federal, state, and local law enforcement to address illegal content and activity online; documented successes and failures by social media companies in cooperating with law enforcement in the event of imminent injury or death; and ways in which social media companies can better communicate, consult, and coordinate with federal, state, and local law enforcement to address illegal content and activity online. The report to Congress should include the results of the study as well as recommendations to develop legislation to address the findings of the study and to require the companies to establish a single point of contact in every state for federal, state, and local law enforcement entities.

D. H.R. 6786, the “Increasing Consumers’ Education on Law Enforcement Resources Act”

H.R. 6786, the “Increasing Consumers’ Education on Law Enforcement Resources Act,” introduced by Rep. Mullin (R-OK) requires the FTC to work with the Attorney General (AG) to develop an educational program to inform the public about resources available to the public should they feel their safety or security was violated online. The FTC and AG should consult with state attorneys general as well as technologists, academic researchers, and industry representatives on the program, which is to be made available to the public through the FTC’s website. The program will also be part of an annual education campaign to inform the public about these resources.

E. H.R. 6796, the “Digital Services Oversight and Safety Act of 2022”

H.R. 6796, the “Digital Services Oversight and Safety Act of 2022,” introduced by Rep. Trahan (D-MA), establishes a Bureau of Digital Services Oversight and Safety at the FTC to conduct oversight of covered platforms as designated by the FTC. The 500-person Bureau includes technologists, sociotechnical experts, and constitutional lawyers.

Under the bill, the FTC has rulemaking and investigatory authority to define code of conduct for online platforms and ensure platforms are adhering to that code of conduct. The code of conduct includes accountability measures requiring platforms to cover its content moderation practices in its community standards and requiring platforms to release public-facing transparency reports with statistics related to amount and type of content moderation enforcement by the platforms. Large covered platforms must undergo an additional level of scrutiny by conducting an independent audit on compliance with the FTC’s regulations.

The FTC must also establish an Office of Independent Research Facilitation to facilitate and certify independent research on covered platforms. Through regulation, the FTC shall determine what platforms are covered under the bill. The Office would then oversee a process by which covered platforms must submit a data dictionary to the FTC describing the data collection practices of the platform and large covered platforms must preserve data via advertisement libraries to assist certified researchers. The FTC should take into account the monthly active users on the platform when determining whether it is a covered platform or a large covered platform. The bill also establishes a fellowship program at the Bureau for fellows to conduct research on mitigation of systemic risks associated with platforms.

III. WITNESSES

The following witnesses have been invited to testify:

Laurel Lehman
Policy Analyst
Consumer Reports

Katie McInnis
Senior Public Policy Manager US
Duck Duck Go, Inc.

Mutale Nkonde
Chief Executive Officer
AI for the People U.S.

Mike Duffey
Special Agent Supervisor
Florida Department of Law Enforcement