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S.L.C.


AMENDMENT NO. _____ Calendar No. _____

Purpose: To require that internet platforms give users the option to engage with a platform without being manipulated by algorithms driven by user-specific data.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 1409

To protect the safety of children on the internet.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. THUNE to the amendment (No. _____) proposed by Mrs. BLACKBURN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. 2. FILTER BUBBLE TRANSPARENCY REQUIREMENTS.**

3 (a) DEFINITIONS.—In this section:

4 (1) ALGORITHMIC RANKING SYSTEM.—The
5 term “algorithmic ranking system” means a com-
6 putational process, including one derived from algo-
7 rithmic decision-making, machine learning, statis-
8 tical analysis, or other data processing or artificial
9 intelligence techniques, used to determine the selec-
10 tion, order, relative prioritization, or relative promi-
11 nence of content from a set of information that is

1 provided to a user on a covered internet platform,
2 including the ranking of search results, the provision
3 of content recommendations, the display of social
4 media posts, or any other method of automated con-
5 tent selection.

6 (2) APPROXIMATE GEOLOCATION INFORMA-
7 TION.—The term “approximate geolocation informa-
8 tion” means information that identifies the location
9 of an individual, but with a precision of less than 5
10 miles.

11 (3) COMMISSION.—The term “Commission”
12 means the Federal Trade Commission.

13 (4) CONNECTED DEVICE.—The term “con-
14 nected device” means an electronic device that—

15 (A) is capable of connecting to the inter-
16 net, either directly or indirectly through a net-
17 work, to communicate information at the direc-
18 tion of an individual;

19 (B) has computer processing capabilities
20 for collecting, sending, receiving, or analyzing
21 data; and

22 (C) is primarily designed for or marketed
23 to consumers.

24 (5) COVERED INTERNET PLATFORM.—

1 (A) IN GENERAL.—The term “covered
2 internet platform” means any public-facing
3 website, internet application, or mobile applica-
4 tion, including a social network site, video shar-
5 ing service, search engine, or content aggrega-
6 tion service.

7 (B) EXCLUSIONS.—Such term shall not in-
8 clude a platform that—

9 (i) is wholly owned, controlled, and
10 operated by a person that—

11 (I) for the most recent 6-month
12 period, did not employ more than 500
13 employees;

14 (II) for the most recent 3-year
15 period, averaged less than
16 \$50,000,000 in annual gross revenue;
17 and

18 (III) collects or processes on an
19 annual basis the user-specific data of
20 less than 1,000,000 users; or

21 (ii) is operated for the sole purpose of
22 conducting research that is not made for
23 profit either directly or indirectly.

24 (6) INPUT-TRANSPARENT ALGORITHM.—

1 (Λ) IN GENERAL.—The term “input-trans-
2 parent algorithm” means an algorithmic rank-
3 ing system that does not use the user-specific
4 data of a user to determine the selection, order,
5 relative prioritization, or relative prominence of
6 information that is furnished to such user on a
7 covered internet platform, unless the user-spe-
8 cific data is expressly provided to the platform
9 by the user for such purpose.

10 (B) DATA PROVIDED FOR EXPRESS PUR-
11 POSE OF INTERACTION WITH PLATFORM.—For
12 purposes of subparagraph (Λ), user-specific
13 data that is provided by a user for the express
14 purpose of determining the selection, order, rel-
15 ative prioritization, or relative prominence of in-
16 formation that is furnished to such user on a
17 covered internet platform—

18 (i) shall include user-supplied search
19 terms, filters, speech patterns (if provided
20 for the purpose of enabling the platform to
21 accept spoken input or selecting the lan-
22 guage in which the user interacts with the
23 platform), saved preferences, and the cur-
24 rent precise geolocation information that is
25 supplied by the user;

1 (ii) shall include the user's current ap-
2 proximate geolocation information;

3 (iii) shall include data affirmatively
4 supplied to the platform by the user that
5 expresses the user's desire to receive par-
6 ticular information, such as the social
7 media profiles the user follows, the video
8 channels the user subscribes to, or other
9 content or sources of content on the plat-
10 form the user has selected;

11 (iv) shall not include the history of
12 the user's connected device, including the
13 user's history of web searches and brows-
14 ing, previous geographical locations, phys-
15 ical activity, device interaction, and finan-
16 cial transactions; and

17 (v) shall not include inferences about
18 the user or the user's connected device,
19 without regard to whether such inferences
20 are based on data described in clause (i) or
21 (iii).

22 (7) OPAQUE ALGORITHM.—

23 (A) IN GENERAL.—The term “opaque al-
24 gorithm” means an algorithmic ranking system
25 that determines the selection, order, relative

1 prioritization, or relative prominence of infor-
2 mation that is furnished to such user on a cov-
3 ered internet platform based, in whole or part,
4 on user-specific data that was not expressly
5 provided by the user to the platform for such
6 purpose.

7 (B) EXCEPTION FOR AGE-APPROPRIATE
8 CONTENT FILTERS.—Such term shall not in-
9 clude an algorithmic ranking system used by a
10 covered internet platform if—

11 (i) the only user-specific data (includ-
12 ing inferences about the user) that the sys-
13 tem uses is information relating to the age
14 of the user; and

15 (ii) such information is only used to
16 restrict a user's access to content on the
17 basis that the individual is not old enough
18 to access such content.

19 (8) PRECISE GEOLOCATION INFORMATION.—
20 The term “precise geolocation information” means
21 geolocation information that identifies an individ-
22 ual's location to within a range of 5 miles or less.

23 (9) SEARCH SYNDICATION CONTRACT; UP-
24 STREAM PROVIDER; DOWNSTREAM PROVIDER.—

1 (A) SEARCH SYNDICATION CONTRACT.—

2 The term “search syndication contract” means
3 a contract or subcontract for the sale of, license
4 of, or other right to access an index of web
5 pages or search results on the internet for the
6 purpose of operating an internet search engine.

7 (B) UPSTREAM PROVIDER.—The term
8 “upstream provider” means, with respect to a
9 search syndication contract, the person that
10 grants access to an index of web pages or
11 search results on the internet to a downstream
12 provider pursuant to the contract.

13 (C) DOWNSTREAM PROVIDER.—The term
14 “downstream provider” means, with respect to
15 a search syndication contract, the person that
16 receives access to an index of web pages on the
17 internet from an upstream provider under such
18 contract.

19 (10) USER-SPECIFIC DATA.—The term “user-
20 specific data” means information relating to an indi-
21 vidual or a specific connected device that would not
22 necessarily be true of every individual or device.

23 (b) REQUIREMENT TO ALLOW USERS TO SEE
24 UNMANIPULATED CONTENT ON INTERNET PLAT-
25 FORMS.—

1 (1) IN GENERAL.—Beginning on the date that
2 is 1 year after the date of enactment of this Act, it
3 shall be unlawful—

4 (A) for any person to operate a covered
5 internet platform that uses an opaque algo-
6 rithm unless the person complies with the re-
7 quirements of paragraph (2); or

8 (B) for any upstream provider to grant ac-
9 cess to an index of web pages on the internet
10 under a search syndication contract that does
11 not comply with the requirements of paragraph
12 (3).

13 (2) OPAQUE ALGORITHM REQUIREMENTS.—

14 (A) IN GENERAL.—The requirements of
15 this paragraph with respect to a person that op-
16 erates a covered internet platform that uses an
17 opaque algorithm are the following:

18 (i) The person provides notice to users
19 of the platform—

20 (I) that the platform uses an
21 opaque algorithm that uses user-spe-
22 cific data to select the content the
23 user sees. Such notice shall be pre-
24 sented in a clear, conspicuous manner
25 on the platform whenever the user

1 interacts with an opaque algorithm for
2 the first time, and may be a one-time
3 notice that can be dismissed by the
4 user; and

5 (II) in the terms and conditions
6 of the covered internet platform, in a
7 clear, accessible, and easily com-
8 prehensible manner to be updated no
9 less frequently than once every 6
10 months—

11 (aa) the most salient fea-
12 tures, inputs, and parameters
13 used by the algorithm;

14 (bb) how any user-specific
15 data used by the algorithm is col-
16 lected or inferred about a user of
17 the platform, and the categories
18 of such data;

19 (cc) any options that the
20 covered internet platform makes
21 available for a user of the plat-
22 form to opt out or exercise op-
23 tions under clause (ii), modify
24 the profile of the user or to influ-
25 ence the features, inputs, or pa-

1 parameters used by the algorithm;
2 and

3 (dd) any quantities, such as
4 time spent using a product or
5 specific measures of engagement
6 or social interaction, that the al-
7 gorithm is designed to optimize,
8 as well as a general description
9 of the relative importance of each
10 quantity for such ranking.

11 (ii) The person makes available a
12 version of the platform that uses an input-
13 transparent algorithm and enables users to
14 easily switch between the version of the
15 platform that uses an opaque algorithm
16 and the version of the platform that uses
17 the input-transparent algorithm.

18 (B) NONAPPLICATION TO CERTAIN DOWN-
19 STREAM PROVIDERS.—Subparagraph (A) shall
20 not apply with respect to an internet search en-
21 gine if—

22 (i) the search engine is operated by a
23 downstream provider with fewer than
24 1,000 employees; and

1 (ii) the search engine uses an index of
2 web pages on the internet to which such
3 provider received access under a search
4 syndication contract.

5 (3) SEARCH SYNDICATION CONTRACT REQUIRE-
6 MENT.—The requirements of this paragraph with re-
7 spect to a search syndication contract are that—

8 (A) as part of the contract, the upstream
9 provider makes available to the downstream
10 provider the same input-transparent algorithm
11 used by the upstream provider for purposes of
12 complying with paragraph (2)(A)(ii); and

13 (B) the upstream provider does not impose
14 any additional costs, degraded quality, reduced
15 speed, or other constraint on the functioning of
16 such algorithm when used by the downstream
17 provider to operate an internet search engine
18 relative to the performance of such algorithm
19 when used by the upstream provider to operate
20 an internet search engine.

21 (4) PROHIBITION ON DIFFERENTIAL PRIC-
22 ING.—A covered internet platform shall not deny,
23 charge different prices or rates for, or condition the
24 provision of a service or product to an individual
25 based on the individual's election to use a version of

1 the platform that uses an input-transparent algo-
2 rithm as provided under paragraph (2)(A)(ii).

3 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
4 SION.—

5 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
6 TICES.—A violation of this section by an operator of
7 a covered internet platform shall be treated as a vio-
8 lation of a rule defining an unfair or deceptive act
9 or practice prescribed under section 18(a)(1)(B) of
10 the Federal Trade Commission Act (15 U.S.C.
11 57a(a)(1)(B)).

12 (2) POWERS OF COMMISSION.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (C), the Federal Trade Commis-
15 sion shall enforce this section in the same man-
16 ner, by the same means, and with the same ju-
17 risdiction, powers, and duties as though all ap-
18 plicable terms and provisions of the Federal
19 Trade Commission Act (15 U.S.C. 41 et seq.)
20 were incorporated into and made a part of this
21 section.

22 (B) PRIVILEGES AND IMMUNITIES.—Ex-
23 cept as provided in subparagraph (C), any per-
24 son who violates this Act shall be subject to the
25 penalties and entitled to the privileges and im-

1 communities provided in the Federal Trade Com-
2 mission Act (15 U.S.C. 41 et seq.).

3 (C) COMMON CARRIERS AND NONPROFIT
4 ORGANIZATIONS.—Notwithstanding section 4,
5 5(a)(2), or 6 of the Federal Trade Commission
6 Act (15 U.S.C. 44, 45(a)(2), 46) or any juris-
7 dictional limitation of the Commission, the
8 Commission shall also enforce this Act, in the
9 same manner provided in subparagraphs (A)
10 and (B) of this paragraph, with respect to—

11 (i) common carriers subject to the
12 Communications Act of 1934 (47 U.S.C.
13 151 et seq.) and Acts amendatory thereof
14 and supplementary thereto; and

15 (ii) organizations not organized to
16 carry on business for their own profit or
17 that of their members.

18 (D) AUTHORITY PRESERVED.—Nothing in
19 this section shall be construed to limit the au-
20 thority of the Commission under any other pro-
21 vision of law.

22 (3) RULE OF APPLICATION.—Section 11 shall
23 not apply to this section.

24 (d) RULE OF CONSTRUCTION TO PRESERVE PERSON-
25 ALIZED BLOCKS.—Nothing in this section shall be con-

1 strued to limit or prohibit a covered internet platform's
2 ability to, at the direction of an individual user or group
3 of users, restrict another user from searching for, finding,
4 accessing, or interacting with such user's or group's ac-
5 count, content, data, or online community.