To protect the right of the American public under the First Amendment to the Constitution of the United States to receive news and information from disparate sources by regulating the use of automated software programs intended to impersonate or replicate human activity on social media.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2018

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the right of the American public under the First Amendment to the Constitution of the United States to receive news and information from disparate sources by regulating the use of automated software programs intended to impersonate or replicate human activity on social media.

1 Be it enacted by the Senate and House of Representa-

2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Bot Disclosure and

5 Accountability Act of 2018”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to the Pew Research Center, in 2005, only 5 percent of adults in the United States used online social media, but by 2018, 69 percent of adults in the United States reported using some type of social media, including 88 percent of adults under the age of 29, and 67 percent of adults in the United States reportedly obtained some of their news from social media, including 78 percent of adults under the age of 50.

(2) In 2016, a study titled “Social bots distort the 2016 U.S. Presidential election online discussion” found that, during the 2016 United States presidential election, approximately 400,000, or 15 percent, of the users of the social media website Twitter who discussed the election were social media bots. Those bots produced 3,800,000 tweets, which accounted for 19 percent of all tweets regarding the election.

(3) In 2017, a report published by researchers from the University of Oxford and the University of Pennsylvania titled “Computational Propaganda in the United States: Manufacturing Consensus Online” noted that, “According to many of the people interviewed for the report, including political bot
makers and campaign personnel, the goals of bot-driven tactics are manifold: to create a bandwagon effect, to build fake social media trends by automatically spreading hashtags, and even to suppress the opinions of the opposition.”.

(4) In testimony before the Committee on the Judiciary of the Senate, representatives from Twitter reported that, of the 2,752 Twitter accounts associated with the Russian intelligence unit known as the “Internet Research Agency”, more than 47 percent were social media bots.

(5) In 2017, the Oxford Internet Institute found that Russian government social media bots were used to manipulate highly targeted and consequential segments of the electorate of the United States. Researchers found that, of all tweets related to the 2016 United States presidential election, Russian propaganda constituted—

(A) 40 percent of such tweets directed to Pennsylvania residents;

(B) 34 percent of such tweets directed to Michigan residents;

(C) 30 percent of such tweets directed to Wisconsin residents;
(D) 41 percent of such tweets directed to Florida residents;

(E) 40 percent of such tweets directed to North Carolina residents; and

(F) 35 percent of such tweets directed to Ohio residents.

(6) In Associated Press v. United States, 326 U.S. 1 (1945), the Supreme Court found, “It would be strange indeed, however, if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom.”.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that the United States Government has a compelling interest in—

(1) mitigating the deceptiveness of social media bots, which impersonate human activity online, through public disclosure requirements that impose a minimal burden on rights protected under the First Amendment to the Constitution of the United States;

(2) regulating the use of social media bots in political advertising, which is intended to deceive
voters and suppress human speech, in a manner that
does not—

   (A) distinguish between political messages
   based on—

        (i) content; or

        (ii) the nature of the person pro-

   ducing a message; or

   (B) impose any aggregate limit on political
   speech; and

   (3) mitigating the effectiveness of efforts by
   foreign entities to influence United States elections
   through the use of social media bots to spread mis-
   information and propaganda.

SEC. 4. PUBLIC DISCLOSURE OF SOFTWARE PROGRAMS IN-
TENDED TO IMPersonate OR REPLICATE
HUMAN ACTIVITY.

(a) Definitions.—

   (1) In General.—In this section—

        (A) the term “automated software pro-

   gram or process intended to impersonate or

   replicate human activity online” has the mean-

   ing given the term by the Commission by regu-

   lation under paragraph (2);

        (B) the term “Commission” means the

   Federal Trade Commission;
(C) the term "social media provider" means any person that owns or operates a social media website; and

(D) the term "social media website" means any tool, website, application, or other media that connects users on the internet for the purpose of engaging in dialogue, sharing information, collaborating, and interacting.

(2) Definition by Regulation.—Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate regulations under section 553 of title 5, United States Code, to define the term "automated software program or process intended to impersonate or replicate human activity online" broadly enough so that the definition is not limited to current technology.

(b) Regulations.—Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate regulations under section 553 of title 5, United States Code, to require a social media provider to establish and implement policies and procedures to require a user of a social media website owned or operated by the social media provider to publically disclose the use of any automated software program or process intended to imper-
sonate or replicate human activity online on the social media website.

(c) REQUIREMENTS.—In promulgating regulations under subsection (b), the Commission shall require a social media provider to establish and implement, for each social media website owned or operated by the social media provider—

(1) a policy that requires any user of the social media website that employs an automated software program or process intended to impersonate or replicate human activity online on the social media website to provide clear and conspicuous notice of the automated program in clear and plain language to any other person or user of the social media website who may be exposed to activities conducted by the automated program;

(2) a process that allows a user of the social media website to provide clear and conspicuous notice to any other person or user as required under paragraph (1);

(3) a process to identify, assess, and verify whether the activity of any user of the social media website is conducted by an automated software program or process intended to impersonate or replicate human activity online;
(4) a process by which the social media provider will take reasonable preventative and corrective action to mitigate efforts by a user to use an automated software program or process intended to impersonate or replicate human activity online without disclosure as required under paragraph (1), which may include suspension or any other action authorized by the Commission;

(5) a process by which the social media provider will remove posts, images, or any other online activity of a user or profile making use of an automated software program or process intended to impersonate or replicate human activity online that is not in compliance with the policy under paragraph (1); and

(6) a process that allows a human user of the social media website the opportunity to demonstrate that the online activity of the user is in compliance with the policy required under paragraph (1) prior to, or immediately following, any mitigation activity described in paragraph (4) or (5).

(d) Rule of Construction.—Nothing in this section shall be construed to require any social media provider to permit an automated software program or process intended to impersonate or replicate human activity online
on a social media website owned or operated by the social
media provider.

(c) Enforcement.—

(1) Unfair or Deceptive Acts or Practices.—A violation of a regulation promulgated
under subsection (b) shall be treated as a violation
of a rule defining an unfair or deceptive act or prac-
tice prescribed under section 18(a)(1)(B) of the Fed-
57a(a)(1)(B)).

(2) Powers of Commission.—

(A) In General.—Except as provided in
subparagraph (C), the Commission shall enforce
this section in the same manner, by the same
means, and with the same jurisdiction, powers,
and duties as though all applicable terms and
provisions of the Federal Trade Commission
Act (15 U.S.C. 41 et seq.) were incorporated
into and made a part of this section.

(B) Privileges and Immunities.—Ex-
cept as provided in subparagraph (C), any per-
son who violates subsection (b) shall be subject
to the penalties and entitled to the privileges
and immunities provided in the Federal Trade
Commission Act (15 U.S.C. 41 et seq.).
(C) Common carriers and nonprofit organizations.—Notwithstanding section 4, 5(a)(2), or 6 of the Federal Trade Commission Act (15 U.S.C. 44, 45(a)(2), 46) or any jurisdictional limitation of the Commission, the Commission shall also enforce this section, in the same manner provided in subparagraphs (A) and (B) of this paragraph, with respect to—

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

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

(D) Authority preserved.—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.
SEC. 5. PROHIBITION ON AUTOMATED SOFTWARE PROGRAMS INTENDED TO IMPERSONATE OR REPPLICATE HUMAN ACTIVITY FOR ONLINE POLITICAL ADVERTISING.

Title III of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) is amended by adding at the end the following new section:

“SEC. 325. PROHIBITION ON THE USE OF CERTAIN AUTOMATED SOFTWARE PROGRAMS FOR POLITICAL ADVERTISING.

“(a) Prohibition.—

“(1) Candidates and political parties.—

No candidate (including any authorized committee of a candidate) or political party may—

“(A) use or cause to be used any automated software programs or processes intended to impersonate or replicate human activity online to make, amplify, share, or otherwise disseminate any public communication; or

“(B) solicit, accept, purchase or sell any automated software programs or processes intended to impersonate or replicate human activity online for any purpose.

“(2) Political committees, corporations, and labor organizations.—No political com-
mittee, corporation, or labor organization (as defined in section 316(b)) may—

“(A) use or cause to be used any automated software programs or processes intended to impersonate or replicate human activity online to make, amplify, share, or otherwise disseminate—

“(i) any message that expressly advocates for the election or defeat of a candidate; or

“(ii) any communication which would be an electioneering communication as defined in section 304(f)(1) if such section were applied—

“(I) by taking into account communications made over the Internet;

“(II) without regard to subparagraph (A)(i)(III) thereof with respect to communications described in subclause (I); and

“(III) by treating the facilities of any online or digital newspaper, magazine, blog, publication, or periodical in the same manner the facilities of a
broadcasting station for purposes of subparagraph (B)(i); or

“(B) solicit, accept, purchase or sell any automated software programs or processes intended to impersonate or replicate human activity online for any purpose described in subparagraph (A).

“(b) EXCEPTION.—The prohibition in subsection (a) shall not apply to any internal or administrative systems that are not oriented or accessible to the public.

“(c) DEFINITION.—For purposes of this section, the term ‘automated software program or process intended to impersonate or replicate human activity online’ has the meaning given such term under section 4 of the Bot Disclosure and Accountability Act of 2018.”.