S. 2763

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

OCTOBER 31, 2019

Mr. THUNE (for himself, Mr. BLUMENTHAL, Mr. MORAN, Mrs. BLACKBURN, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Filter Bubble Transparency Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) ALGORITHMIC RANKING SYSTEM.—The term “algorithmic ranking system” means a com-
putational process, including one derived from algorithmic decision making, machine learning, statistical analysis, or other data processing or artificial intelligence techniques, used to determine the order or manner that a set of information is provided to a user on a covered internet platform, including the ranking of search results, the provision of content recommendations, the display of social media posts, or any other method of automated content selection.

(2) **Commission.**—The term “Commission” means the Federal Trade Commission.

(3) **Connected Device.**—The term “connected device” means a physical object that—

(A) is capable of connecting to the internet, either directly or indirectly through a network, to communicate information at the direction of an individual; and

(B) has computer processing capabilities for collecting, sending, receiving, or analyzing data.

(4) **Covered Internet Platform.**—

(A) **In General.**—The term “covered internet platform” means any public-facing website, internet application, or mobile application, including a social network site, video shar-
ing service, search engine, or content aggrega-

tion service.

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

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

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

(II) for the most recent 3-year
period, averaged less than
$50,000,000 in annual gross receipts;
and

(III) collects or processes on an
annual basis the personal data of less
than 1,000,000 individuals; or

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

(5) INPUT-TRANSPARENT ALGORITHM.—

(A) IN GENERAL.—The term “input-trans-
parent algorithm” means an algorithmic rank-
ing system that does not use the user-specific
data of a user to determine the order or man-
ner that information is furnished to such user
on a covered internet platform, unless the user-specific data is expressly provided to the platform by the user for such purpose.

(B) Inclusion of age-appropriate content filters.—Such term shall include an algorithmic ranking system that uses user-specific data to determine whether a user is old enough to access age-restricted content on a covered internet platform, provided that the system otherwise meets the requirements of subparagraph (A).

(C) Data provided for express purpose of interaction with platform.—For purposes of subparagraph (A), user-specific data that is provided by a user for the express purpose of determining the order or manner that information is furnished to a user on a covered internet platform—

(i) shall include user-supplied search terms, filters, speech patterns (if provided for the purpose of enabling the platform to accept spoken input or selecting the language in which the user interacts with the platform), saved preferences, and the user’s current geographical location;
(ii) shall include data supplied to the platform by the user that expresses the user’s desire that information be furnished to them, such as the social media profiles the user follows, the video channels the user subscribes to, or other sources of content on the platform the user follows;

(iii) shall not include the history of the user’s connected device, including the user’s history of web searches and browsing, geographical locations, physical activity, device interaction, and financial transactions; and

(iv) shall not include inferences about the user or the user’s connected device, without regard to whether such inferences are based on data described in clause (i).

(6) OPAQUE ALGORITHM.—

(A) IN GENERAL.—The term “opaque algorithm” means an algorithmic ranking system that determines the order or manner that information is furnished to a user on a covered internet platform based, in whole or part, on user-specific data that was not expressly pro-
vided by the user to the platform for such purpose.

(B) Exception for age-appropriate content filters.—Such term shall not include an algorithmic ranking system used by a covered internet platform if—

(i) the only user-specific data (including inferences about the user) that the system uses is information relating to the age of the user; and

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

(7) Search syndication contract; upstream provider; downstream provider.—

(A) Search syndication contract.—The term “search syndication contract” means a contract or subcontract for the sale, license, or other right to access an index of web pages on the internet for the purpose of operating an internet search engine.

(B) Upstream provider.—The term “upstream provider” means, with respect to a search syndication contract, the person that
grants access to an index of web pages on the internet to a downstream provider under the contract.

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

(8) **USER-SPECIFIC DATA.**—The term “user-specific data” means information relating to an individual or a specific connected device that would not necessarily be true of every individual or device.

**SEC. 3. REQUIREMENT TO ALLOW USERS TO SEE UNMANIPULATED CONTENT ON INTERNET PLATFORMS.**

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

(1) for any person to operate a covered internet platform that uses an opaque algorithm unless the person complies with the requirements of subsection (b); or

(2) for any upstream provider to grant access to an index of web pages on the internet under a
search syndication contract that does not comply with the requirements of subsection (c).

(b) OPAQUE ALGORITHM REQUIREMENTS.—

(1) IN GENERAL.—The requirements of this subsection with respect to a person that operates a covered internet platform that uses an opaque algorithm are the following:

(A) The person provides notice to users of the platform that the platform uses an opaque algorithm that makes inferences based on user-specific data to select the content the user sees. Such notice shall be presented in a clear, conspicuous manner on the platform whenever the user interacts with an opaque algorithm for the first time, and may be a one-time notice that can be dismissed by the user.

(B) The person makes available a version of the platform that uses an input-transparent algorithm and enables users to easily switch between the version of the platform that uses an opaque algorithm and the version of the platform that uses the input-transparent algorithm by selecting a prominently placed icon, which shall be displayed wherever the user interacts with an opaque algorithm.
(2) **Nonapplication to Certain Downstream Providers.**—Paragraph (1) shall not apply with respect to an internet search engine if—

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

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

(c) **Search Syndication Contract Requirement.**—The requirements of this subsection with respect to a search syndication contract are that—

(1) as part of the contract, the upstream provider makes available to the downstream provider the same input-transparent algorithm used by the upstream provider for purposes of complying with subsection (b)(1)(B); and

(2) the upstream provider does not impose any additional costs, degraded quality, reduced speed, or other constraint on the functioning of such algorithm when used by the downstream provider to operate an internet search engine relative to the performance of such algorithm when used by the up-
stream provider to operate an internet search engine.

SEC. 4. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) Unfair or Deceptive Acts or Practices.—A violation of this Act by an operator of a covered internet platform shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Powers of Commission.—

(1) In general.—Except as provided in paragraph (3), the Federal Trade Commission shall enforce this Act 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 Act.

(2) Privileges and immunities.—Except as provided in paragraph (3), any person who violates this Act 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.).
(3) **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 Act, in the same manner provided in paragraphs (1) and (2) of this paragraph, with respect to—

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

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

(4) **Authority preserved.**—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.