

118TH CONGRESS
1ST SESSION

S. 688

To impose notice and consent requirements on internet platforms that use algorithms to manipulate the availability of content on the platform.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2023

Mr. SCOTT of Florida introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To impose notice and consent requirements on internet platforms that use algorithms to manipulate the availability of content on the platform.

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 “Data and Algorithm
5 Transparency Agreement Act” or the “DATA Act”.

1 **SEC. 2. NOTICE AND CONSENT REQUIREMENTS FOR INTER-**
2 **NET PLATFORMS THAT USE ALGORITHMS TO**
3 **MANIPULATE THE AVAILABILITY OF PLAT-**
4 **FORM CONTENT.**

5 (a) IN GENERAL.—Beginning 1 year after the date
6 of enactment of this Act, any covered platform shall com-
7 ply with the requirements of subsection (c).

8 (b) DEFINITIONS.—In this Act:

9 (1) COVERED DATA.—The term “covered data”
10 means, with respect to an individual, data regarding
11 the habits, traits, preferences, beliefs, or location of
12 the individual.

13 (2) COVERED PLATFORM.—the term “covered
14 platform” means a public-facing website, internet
15 application, or mobile internet application, including
16 a social network, video sharing service, ad network,
17 mobile operating system, search engine, email serv-
18 ice, or internet access service that—

19 (A) has not less than 30,000,000 active
20 monthly users in the United States; and

21 (B) uses an algorithm to increase or de-
22 crease the availability of content on the website
23 or application.

24 (c) REQUIREMENTS.—

25 (1) NO COLLECTION OF COVERED DATA WITH-
26 OUT CONSENT.—

1 (A) IN GENERAL.—A covered platform
2 shall not collect any covered data of an indi-
3 vidual without obtaining the individual’s express
4 consent for such data collection.

5 (B) REVOCATION OF CONSENT; RIGHT TO
6 DELETE.—A covered platform shall—

7 (i) allow any individual to revoke or
8 withdraw the individual’s prior consent to
9 the covered platform collecting the individ-
10 ual’s covered data; and

11 (ii) at the request of an individual, de-
12 lete any covered data of the individual col-
13 lected or held by the platform.

14 (2) NO SALE, SHARING, OR CONVEYANCE OF
15 DATA WITHOUT CONSENT.—

16 (A) IN GENERAL.—A covered platform
17 shall not sell, share, or otherwise convey to a
18 third party entity any covered data of an indi-
19 vidual without obtaining the individual’s express
20 consent.

21 (B) REVOCATION OF CONSENT.—A covered
22 platform shall allow any individual to revoke or
23 withdraw the individual’s prior consent to any
24 sale, sharing, or conveyance of the individual’s
25 covered data.

1 (3) NOTICE OF REQUIREMENTS.—

2 (A) IN GENERAL.—A covered platform
3 shall provide notice to users of the platform of
4 the requirements described in paragraphs (1)
5 and (2).

6 (B) MANNER OF NOTIFICATION.—The no-
7 tice required under subparagraph (A) shall con-
8 tain the information described in subparagraph
9 (C) and shall be provided by a covered platform
10 to a user—

11 (i) in plain language and in a con-
12 spicuous manner;

13 (ii) in addition to any notice relating
14 to the terms of service of the platform;

15 (iii) each time the user logs in to the
16 platform unless the user affirmatively
17 waives receiving the notice; and

18 (iv) each time the platform modifies
19 its terms of service.

20 (C) CONTENTS OF NOTIFICATION.—A no-
21 tice required under this paragraph shall include
22 the following:

23 (i) With respect to the collection of
24 covered data by a covered platform—

1 (I) the type of data to be col-
2 lected;

3 (II) whether the collection of
4 data will continue beyond the user's
5 immediate use of the covered plat-
6 form; and

7 (III) how the data will be used by
8 the covered platform.

9 (ii) With respect to the sale, sharing,
10 or conveyance of covered data by a covered
11 platform—

12 (I) the specific data that will be
13 sold, shared, or otherwise conveyed to
14 a third party entity;

15 (II) the name of any third party
16 entity to which data will be sold,
17 shared, or otherwise conveyed; and

18 (III) the country of origin of the
19 third party entity to which the data
20 will be sold, shared, or conveyed.

21 **SEC. 3. ENFORCEMENT.**

22 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
23 MISSION.—

24 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
25 TICES.—A violation of this Act or a regulation pro-

1 mulgated under this Act shall be treated as an un-
2 fair or deceptive act or practice in violation of a rule
3 promulgated under section 18(a)(1)(B) of the Fed-
4 eral Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)).

6 (2) POWERS OF THE COMMISSION.—

7 (A) IN GENERAL.—The Federal Trade
8 Commission shall enforce this Act and any reg-
9 ulation promulgated under this Act in the same
10 manner, by the same means, and with the same
11 jurisdiction, powers, and duties as though all
12 applicable terms and provisions of the Federal
13 Trade Commission Act (15 U.S.C. 41 et seq.)
14 were incorporated into and made a part of this
15 Act.

16 (B) PRIVILEGES AND IMMUNITIES.—Any
17 covered entity who violates this Act or a regula-
18 tion promulgated under this Act shall be sub-
19 ject to the penalties and entitled to the privi-
20 leges and immunities provided in the Federal
21 Trade Commission Act (15 U.S.C. 41 et seq.).

22 (b) PRIVATE RIGHT OF ACTION.—

23 (1) IN GENERAL.—An individual alleging a vio-
24 lation of this Act may bring a civil action in any
25 court of competent jurisdiction, State or Federal.

1 (2) INJURY IN FACT.—A violation of this Act
2 with respect to the requirements to notify and obtain
3 the express consent of the user before the user’s
4 data may be collected, sold, shared, or otherwise
5 conveyed to a third-party entity constitutes a con-
6 crete and particularized injury in fact to that indi-
7 vidual.

8 (3) RELIEF.—In a civil action brought under
9 paragraph (1) in which the plaintiff prevails, the
10 court shall award—

11 (A) the greater of—

12 (i) not less than \$5,000; and

13 (ii) actual damages; and

14 (B) reasonable attorney’s fees and litiga-
15 tion costs.

16 (c) RULEMAKING.—The Federal Trade Commission
17 shall promulgate in accordance with section 553 of title
18 5, United States Code, such rules as may be necessary
19 to carry out this Act.

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