

September 4, 2018

The Honorable Greg Walden, Chair
The Honorable Frank Pallone, Ranking Member
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Pallone:

We write to you regarding the “Twitter: Transparency and Accountability” hearing.¹ The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² EPIC has promoted “Algorithmic Transparency” for many years.³ This is a core principle in the field of data protection as it helps ensure that automated decisions about individuals are fair, transparent, and accountable. Algorithmic transparency could also help establish fairness, transparency, and accountability for dominant Internet firms that determine much of what users see online.

In recent comments to the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), EPIC noted that free speech rights are curtailed when platforms use secret algorithms to automatically filter online content.⁴ Without accountability and transparency for such techniques, the free exchange of ideas on the web would be severely obstructed by automated, extrajudicial filtering techniques. Algorithmic transparency is imperative to identify potential biases, and also to identify anticompetitive behavior that could favor the content of a platform over the content of a competitor. Transparency safeguards the cultural diversity of the Internet by upholding the exercise of free expression, and ensures an open web where ideas can be exchanged without the domination of one particular viewpoint favored by a firm, reflected in the algorithms it has deployed.⁵

¹ *Twitter: Transparency and Accountability*, 115th Cong. (2018), H. Comm. on Energy and Commerce, <https://energycommerce.house.gov/hearings/twitter-transparency-and-accountability/> (Sept. 5, 2018).

² EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

³ EPIC, *Algorithmic Transparency*, <https://epic.org/algorithmic-transparency/>.

⁴ Comments of EPIC, *Developing UNESCO’s Internet Universality Indicators: Help UNESCO Assess and Improve the Internet*, United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Mar. 15, 2018), 5-6, [https://epic.org/internet-universality/EPIC_UNESCO_Internet_Universality_Comment%20\(3\).pdf](https://epic.org/internet-universality/EPIC_UNESCO_Internet_Universality_Comment%20(3).pdf).

⁵ *Id.*

The Right to Access Information

Algorithms that rank and index search results must be scrutinized for distorting web users' access to information with limited transparency and accountability. Virtually every search engine, social media company, and web operator develops its own unique algorithm to curate content for individual users to control how information is fetched and displayed from search queries.⁶

There are many dangers with these information-mediating techniques:

- Filtering algorithms can prevent individuals from using the Internet to exchange information on topics that may be controversial or unpopular;
- Content may be labelled and categorized according to a rating system designed by governments to enable censorship and block access to political opposition or specific keywords;
- ISPs may block access to content on entire domains or selectively filter out web content available at any domain or page which contains a specific keyword or character string in the URL;
- Self-rating schemes by private entities will turn the Internet into a homogenized medium dominated by commercial speakers;
- Self-rating schemes will embolden and encourage government regulation on access to information on the Internet; and
- The majority of users are unaware of how algorithmic filtering restricts their access to information and do not have an option to disable filters.

Several years ago, EPIC encountered the problem of opaque algorithms deployed by a dominant platform. At the time, EPIC, an organization whose mission is to educate the public about emerging privacy issues, provided several videos that were among the top-ranked search results on YouTube for a search on “privacy. At the time, YouTube’s search results were organized by the objective criteria of “hits” and “viewer rankings.” Both of these are objective criteria and easy to verify.

But after Google acquired YouTube, EPIC’s search rankings fell. Google had substituted its own subjective, “relevance” ranking in place of objective search criteria. Google’s ranking algorithm was opaque and proprietary. And significantly, Google’s subjective algorithm preferenced Google’s video content on YouTube concerning “privacy” over that of EPIC and others. Suddenly, the Google videos rose in the rankings.

At the time, we prepared a detailed report for the FTC when it undertook its investigation of anti-competitive behavior of Internet companies.⁷ EPIC’s 2011 letter to the FTC is attached here.

⁶ See, Jaap-Henk Hoepman, *Summary of the CPDP Panel on Algorithmic Transparency* (Jan. 26, 2017) (summarizing remarks of Marc Rotenberg, EPIC President), <https://blog.xot.nl/2017/01/26/summary-of-the-cpdp-panel-on-algorithmic-transparency/>.

⁷ Letter from EPIC to Commissioners of the Federal Trade Commission (Sept. 8, 2011), https://epic.org/privacy/ftc/google/Google_FTC_Ltr_09_08_11.pdf.

The FTC took no action on EPIC's complaint. But last year, after a seven year investigation, the European Commission found that Google had abused its dominance as a search engine by rigging its search results to give preference to its own shopping service.⁸ The Commission required Google to change its algorithm to rank its own shopping comparison the same way it ranks its competitors.

Facebook's recent release of its community guidelines is a good example of what transparency can look like.⁹ It is a step in the right direction, but more must be done. For example, Twitter could make public its search algorithm to make clear that it is not preferencing accounts affiliated with certain views.

Conclusion

Algorithmic transparency is necessary to police anti-competitive conduct by dominant platforms. Algorithmic transparency will help ensure fairness, transparency, and accountability without the need to limit speech or mandate the publication of competing views.

We ask that this Statement be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Christine Bannan

Christine Bannan
EPIC Policy Fellow

Attachment

Letter from EPIC to the Federal Trade Commission regarding Google and Search Results on YouTube (Sept. 8, 2011)

⁸ Press Release, European Commission, *Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service* (June 27, 2017), http://europa.eu/rapid/press-release_IP-17-1784_en.htm.

⁹ Facebook, *Publishing Our Internal Enforcement Guidelines and Expanding Our Appeals Process* (Apr. 24, 2018), <https://newsroom.fb.com/news/2018/04/comprehensive-community-standards/>.