May 15, 2018

Senator Chuck Grassley, Chairman
Senator Dianne Feinstein, Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

We write to you regarding the hearing this week on "Cambridge Analytica and the Future of Data Privacy."[1] We appreciate your interest in this important issue. For many years, the Electronic Privacy Information Center ("EPIC") has worked with the Senate Judiciary Committee to help protect the privacy rights of Americans.[2]

In a statement from EPIC to the Committee prior to last month's Facebook hearing, we outlined the history of Facebook's 2011 Consent Order with the Federal Trade Commission, pointed to key developments (including the failure of the FTC to enforce the Order), and made several preliminary recommendations.[3] Our assessment was, and still is, that the Cambridge Analytica breach, and a range of threats to consumer privacy and democratic institutions, could have been prevented if the Commission had enforced the Order, which EPIC helped obtain.[4]

As the Committee continues its investigation into the future of data privacy in the United States, we write to highlight how privacy is integral to democracy. It has become increasingly

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[1] *Cambridge Analytica and the Future of Data Privacy: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (2018), https://www.judiciary.senate.gov/meetings/cambridge-analytica-and-the-future-of-data-privacy (May 16, 2018).

[2] *See, e.g., The Video Privacy Protection Act: Protecting Viewer Privacy in the 21st Century: Hearing Before the S. Comm on the Judiciary*, 112th Cong. (2012) (statement of Marc Rotenberg, Exec. Dir., EPIC), https://epic.org/privacy/vppa/EPIC-Senate-VPPA-Testimony.pdf; *An Examination of the Google-Doubleclick Merger and the Online Advertising Industry: What are the Risks for Competition and Privacy?: Hearing Before the S. Comm on the Judiciary*, 110th Cong. (2007) (testimony of Marc Rotenberg, Exec. Dir., EPIC), https://epic.org/privacy/ftc/google/epic_test_092707.pdf.

[3] *Facebook, Social Media Privacy, and the Use and Abuse of Data: Hearing Before the S. Comm. on the Judiciary*, 115th Cong. (2018) (statement of EPIC), https://epic.org/testimony/congress/EPIC-SJC-Facebook-Apr2018.pdf.

[4] FTC, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises,* (Nov. 29, 2011) ("Facebook's privacy practices were the subject of complaints filed with the FTC by the Electronic Privacy Information Center and a coalition of consumer groups."), https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep

Privacy is a Fundamental Right.

clear that even as we are asked to give up our privacy, companies have become ever more secretive about how they profile and target voters. Accountability should be restored.

Algorithmic Transparency

EPIC has promoted "Algorithmic Transparency" for many years.[5] 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 companies that seek to influence the views of voters.

Several years ago, EPIC challenged Facebook's manipulation of users' News Feeds for psychological research.[6] In 2012, Facebook subjected 700,000 users to an "emotional" test with the manipulation of News Feeds.[7] For one week (January 11-18, 2012), Facebook "manipulated the extent to which 689,003 people were exposed to emotional expressions in their News Feed" to test "whether exposure to emotions led people to change their own posting behaviors." Facebook conducted two parallel experiments: "One in which exposure to friends' positive emotional content in their News Feed was reduced, and one in which exposure to negative emotional content in their News Feed was reduced."

Facebook did not get users' permission to conduct this study or notify users that their data would be disclosed to researchers. In the complaint, EPIC explained that Facebook's misuse of data is a deceptive practice subject to FTC enforcement. "The company purposefully messed with people's minds," wrote EPIC in a complaint to the Commission. Facebook asserted that it obtained "informed consent for this research" because all users agree to Facebook's Data Use Policy "prior to creating an account on Facebook."

If Facebook used data manipulation to shape users' emotions, it can use data manipulation to shape voters' practices.[8] That is a threat to our democracy.

Facebook's release of its community guidelines earlier last month is a good example of what transparency can look like.[9] It is a step in the right direction, but more must be done. Individuals have the right to know the data profiles that generate targeted advertising and they have the right to know the source of commercial ads. Neither requirement would limit speech or impose "equal time" obligations. These obligations are consistent with privacy rules that seek to ensure transparency and accountability for the user of personal data.

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[5] EPIC, *Algorithmic Transparency*, https://epic.org/algorithmic-transparency/.
[6] EPIC Complaint to the Federal Trade Commission, *In the Matter of Facebook, Inc.* (July 3, 2014), https://epic.org/privacy/internet/ftc/facebook/psycho/Facebook-Study-Complaint.pdf (background available at https://epic.org/privacy/internet/ftc/facebook/psycho/).
[7] Robinson Meyer, *Everything We Know About Facebook's Secret Mood Manipulation Experiment*, The Atlantic (Jun. 28, 2014), https://www.theatlantic.com/technology/archive/2014/06/everything-we-know-about-facebooks-secret-mood-manipulation-experiment/373648/.
[8] danah boyd, *What does the Facebook experiment teach us?*, Medium (July 2, 2014), https://medium.com/message/what-does-the-facebook-experiment-teach-us-c858c08e287f.
[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/.

Conclusion

   Algorithmic transparency is necessary to protect democracies from fake news and disinformation. Algorithmic transparency will help ensure fairness, transparency, and accountability in our elections without the need to limit speech or mandate the publication of competing views.

   We ask that this letter be submitted into the hearing record. EPIC looks forward to working with the Committee.

    Sincerely,

    /s/ *Marc Rotenberg*   /s/ *Caitriona Fitzgerald*
    Marc Rotenberg   Caitriona Fitzgerald
    EPIC President   EPIC Policy Director