

Commerce Committee

Wednesday, February 17, 2021
4:00 PM - 6:00 PM
Sumner Hall (404 HOB)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Workshop on the following:
Technology Transparency Draft Legislation

Presentation on Social Media and Society:
Andrew Selepak, Ph.D., Program Coordinator - Master's program with specialization in Social Media, and Lecturer - Department of Telecommunication University of Florida College of Journalism and Communications

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

Technology Transparency Workshop

Technology Transparency

The bill requires large scale ($100m revenue or 100m users) **social media platforms** to:

1. **Publish standards**, including detailed definitions, used for determining whether to censor or ban posts or deplatform users, including standards for "shadow banning".
2. **Consistently apply its published standards** to censor or deplatform users.
3. Inform users about **changes to rules**, agreements and terms, and obtain consent, prior to implementation of such changes. **Prohibit changing standards** more than every 30 days.
4. Provide **written notice to users within 30 days** if the social media platform censors user content or deplatforms a user. The notice must contain a detailed explanation.
5. Inform users about **the number of other users who were actually provided or shown** such users posts or content and allow users to request information on how such determinations are made.
6. Allow deplatformed users to **retrieve all user information** and data for at least 60 days.
7. Allow users to **opt-out of the use of individual types of algorithms, including those related to post-prioritization/shadow banning**, thus allowing sequential posts.
8. Provide an **annual notice of the use of algorithms**, including post-prioritization/shadow banning algorithms, **and reoffer the opportunity to opt-out of the use of individual types of algorithms**.
9. **Exempt any post by a candidate or any post about a candidate from post-prioritization/shadow banning algorithms** starting on the date of qualification through the date of the election.
10. Provide **equal access for news source content** from established journalistic enterprises unless prioritized placement is sponsored by the journalistic enterprise.

The bill makes each violation of these requirements a violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The Florida Attorney General **(AG) may bring action for any violation of FDUPTA** and may collect a civil penalty for each violation of no more than $10,000. **A user may bring an action if** the social media platform fails to consistently apply standards used to censor or deplatform users or fails to provide the required written notice within 30 days. Damages are provided up to $100,000 per claim, including attorney's fees for deplatforming without cause, and actual and punitive damages depending on circumstances.

The bill ensures that the **AG has subpoena power** needed to obtain information, including algorithms, from social media platforms **to investigate violations**. The tied public records bill also includes a public records exemption for active investigations.

The bill temporarily **prevents social media platforms from being considered as a contracting partner with state government** if the AG determines that certain **anti-trust violations** are likely to have occurred. It also permanently bans those companies from contracting with the state that are found guilty of such anti-trust violations. Existing state contracts can be maintained.

The bill **bans** state and local governments **from offering economic development financial incentives** to companies that are determined by the AG to be in violation of **anti-trust laws**.

The bill requires the **Elections Commission** to fine a social media platform for deplatforming an official political candidate for office in Florida ($100,000 a day for statewide candidates and $10,000 per day for other candidates), if the candidate is deplatformed at any time starting on the date of qualification through the date of the election. The bill also requires social media platforms that provide free advertising for a candidate to report such advertising as an in-kind contribution to the candidate under state election laws.

The bill provides for severability. It also provides that it is **only effective as far as it does not violate federal law**.

A bill to be entitled

An act relating to technology transparency; creating s. 106.072, F.S.; providing definitions; prohibiting a social media platform from knowingly deplatforming a candidate; providing fines for violations; authorizing social media platforms to provide fee advertising for candidates under specified conditions; providing enforcement mechanism; creating s. 287.137, F.S.; providing definitions; providing requirements for public contracts and economic incentives related to entities who have been convicted or held civilly liable for antitrust violations; prohibiting a public entity from entering into any type contract with a person or affiliate on the antitrust violator vendor list; providing applicability; requiring certain contract documents to contain a specified statement; requiring the Department of Management Services to maintain a list of people or affiliates disqualified from the public contracting and purchasing process; specifying requirements for publishing such list; providing procedures for placing a person or affiliate on the list; providing procedural and legal rights for a person or affiliate to challenge placement on the list; providing a procedure for placing a person temporarily on an antitrust violator vendor list;

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providing procedural and legal rights for a person to challenge temporary placement on the list; authorizing a person, under specified conditions, to retain rights or obligations under existing contracts or binding agreements; prohibiting a person who has been placed on antitrust violator vendor list from receiving certain economic incentives; providing exceptions; providing enforcement methodology; creating s. 501.2041, F.S.; providing definitions; authorizing the Department of Legal Affairs to bring specified actions against social media platforms for failure to comply with specified requirements; specifying requirements that must be contained when notification is given by a social platform for certain purposes; providing an exception to notification requirements; authorizing the department to investigate suspected violations under the Deceptive and Unfair Trade Practices Act; specifying circumstances under which a private cause of action may be brought; specifying how damages are to be calculated; specifying powers of the Department of Legal Affairs related to investigations related to acts of shadow banning by social media platforms; providing construction for violations of certain provisions of this act; granting the department specified subpoena powers; providing enforcement

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authority; amending s. 501.212, F.S.; conforming a provision to changes made by the act; providing a severability clause; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 106.072, Florida Statutes, is created to read:

106.072 Social media deplatforming of political candidates.—

(1) As used in this section, the term:

(a) "Candidate" has the same meaning as in s. 106.011(3)(e).

(b) "Deplatform" has the same meaning as in s. 501.172.

(c) "Social media platform" has the same meaning as in s. 501.172.

(2) A social media platform may not knowingly deplatform a candidate. Upon a finding of a violation of this section by the Elections Commission, the social media platform may be fined $100,000 per day for statewide candidates and $10,000 per day for other candidates.

(3) A social media platform that knowingly provides free advertising for a candidate must report such advertising as an in-kind contribution to the candidate under state election laws. Posts, content, material, and comments by candidates that are

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shown on the platform in the same or similar way as other user's posts, content, material, and comments is not considered free advertising.

(4) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 2. Section 287.137, Florida Statutes, is created to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(1) As used in this section, the term:

(a) "Affiliate" means:

1. A predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, is a prima facie case that one person controls another person. The

term also includes a person who knowingly enters into a joint venture with a person who has violated an antitrust law during the preceding 36 months.

(b) "Antitrust violation" means any state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, or the United States Department of Justice.

(c) "Antitrust violator vendor list" means the list required to be kept by the department pursuant to paragraph (3)(b).

(d) "Conviction or being held civilly liable" or "convicted or held civilly liable" means a criminal finding of guilt or conviction, with or without an adjudication of guilt, being held civilly liable, or having a judgment levied for an antitrust violation, in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other order finding of liability.

(e) "Economic incentives" means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under chapter 288 or administered by Enterprise Florida, Inc.

(f) "Person" means a natural person or an entity organized

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under the laws of any state or of the United States who operates as a social media platform, as defined in s. 501.2041, with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

(g) "Public entity" means the state and any of its departments or agencies.

(2)(a) A person or affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.

(b) A public entity may not accept a bid, proposal, or reply from, award a new contract to, or transact new business with any person or affiliate on the antitrust violator vendor

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list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(e).

(c) This subsection does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the antitrust violator vendor list, and in no event before July 1, 2021.

(3)(a) Beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as defined in s. 287.012, and any contract document described in s. 287.058 shall contain a statement informing persons of the provisions of paragraph (2)(a).

(b) The department shall maintain an antitrust violator vendor list of the names and addresses of the people or affiliates who have been disqualified from the public contracting and purchasing process under this section. The department shall publish the initial antitrust violator vendor list on January 1, 2022, and shall publish an updated version of the list quarterly thereafter. The revised quarterly list shall also be electronically posted. Notwithstanding this paragraph, a person or affiliate disqualified from the public contracting and purchasing process pursuant to this section is disqualified as of the date the final order is entered.

(c)1. Upon receiving reasonable information from any source that a person was convicted or held civilly liable, the department shall investigate the information and determine

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whether good cause exists to place that person or an affiliate of that person on the antitrust violator vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the antitrust violator vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the antitrust violator vendor list. A person or affiliate may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person or affiliate to be placed on the antitrust violator vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph except within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information

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required by law or rule to be contained in the final order. The final order shall direct the department to place or not place the person or affiliate on the antitrust violator vendor list. The final order of the administrative law judge is final agency action for purposes of s. 120.68.

3. In determining whether it is in the public interest to place a person or affiliate on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:

a. Whether the person or affiliate committed an antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.

d. Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.

e. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

4. In any proceeding under this paragraph, the department must prove that it is in the public interest for the person or affiliate to whom it has given notice under this paragraph to be placed on the antitrust violator vendor list. Proof that a person was convicted or was held civilly liable, or that an entity is an affiliate of a person constitutes a prima facie

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case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or that the person was not civilly liable or is not an affiliate of such person, that person or affiliate shall not be placed on the antitrust violator vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted or held civilly liable. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor list, based upon evidence addressing the factors in subparagraph 3.

(d)1. If a person has been charged or accused of any state or federal antitrust law in a civil or criminal proceeding brought by the Attorney General, a state attorney, or the United

States Department of Justice on or after July 1, 2021, the Attorney General may, by a finding of probable cause that a person has likely violated the underlying antitrust laws, temporarily place such person on the antitrust violator vendor list until such proceeding has concluded.

2. If probable cause exists, the Attorney General shall notify the person in writing of its intent to temporarily place the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the Attorney General shall enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the Attorney General.

3. Within 21 days after receipt of the notice of intent, the person may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for the person or affiliate to be temporarily placed on the antitrust violator vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph.

4. In determining whether it is in the public interest to place a person on the antitrust violator vendor list under this

paragraph, the administrative law judge shall consider the following factors:

a. The likelihood the person committed the antitrust violation.

b. The nature and details of the antitrust violation.

c. The degree of culpability of the person proposed to be placed on the antitrust violator vendor list.

d. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

5. This paragraph does not apply to affiliates.

(e)1. A person may be removed from the antitrust violator vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge must consider any relevant factors, including, but not limited to, the factors identified in subparagraph (c)3. Upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the person's conviction or determination of liability has been reversed on appeal, or that the person has been pardoned, the administrative law judge shall determine that removal of the person or an affiliate of that person from the antitrust violator vendor list is in the public

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interest. A person on the antitrust violator vendor list may petition for removal from the list no sooner than 6 months after the date a final order is entered pursuant to this section but may petition for removal at any time if the petition is based upon a reversal of the conviction or liability on appellate review or pardon. The petition must be filed with the department, and the proceeding must be conducted pursuant to the procedures and requirements of this subsection.

2. If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal before the expiration of such period if, in its discretion, it determines that removal would be in the public interest.

(4) The conviction of a person or a person held civilly liable for an antitrust violation, or placement on the antitrust violator vendor list, does not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the antitrust violator vendor list.

(5) A person who has been placed on the antitrust violator vendor list is not a qualified applicant for economic incentives under chapter 288, and such entity and shall not be qualified to receive such economic incentives.

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(6) This section does not apply to any activities regulated by the Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. 413.032-413.037.

(7) This section may only be enforced to the extent not inconsistent with federal law and notwithstanding any other provision of state law.

Section 3. Section 501.2041, Florida Statutes, is created to read:

501.2041 Unlawful acts and practices by social media platforms.—

(1) As used in this section, the term:

(a) "Algorithm" means a mathematical set of rules that specify how a group of data behaves that will assist in ranking search results and maintaining order or that is used in sorting or ranking content or material based on relevancy or other factors instead of using published time or chronological order of such content or material.

(b) "Censor" includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. This term also includes actions to inhibit the ability

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of a user to be viewable by or to interact with another user of the social media platform.

(c) "Deplatform" means the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 60 days.

(d) "Journalistic enterprise" means an entity that:

1. Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;

2. Publishes 100 hours of audio or video available online with at least 100 million viewers annually;

3. Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or

4. Operates under a broadcast license issued by the Federal Communications Commission.

(e) "Post-prioritization" means action by a social media platform to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, feed, view, or search results. The term does not include post-prioritization of content and material based on payments by a third party, including other users, to the social media platform.

(f) "Shadow ban" means action by a social media platform,

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through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform that are not readily apparent to a user.

(g) "Social media platform" means any information service, system, Internet search engine, or access software provider that does business in the state, and provides or enables computer access by multiple users to a computer server, including an Internet platform and/or a social media site. The Internet platform or social media site may be a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that does business in the state, and that satisfies at least one of the following thresholds:

1. Has annual gross revenues in excess of $100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.

2. Has at least 100 million monthly users globally.

(h) "User" means a person who resides or is domiciled in the state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform.

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(2) A social media platform that fails to comply with any of the provisions of paragraphs (a)-(j) commits a violation of this section.

(a) A social media platform must publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban.

(b) A social media platform must apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform.

(c) A social media platform must inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.

(d) A social media platform may not censor a user's content or material or deplatform a user from the social media platform:

1. Without notifying the user who posted or attempted to post the content or material; or

2. In a way that violates this part.

(e) A social media platform must:

1. Provide a mechanism that allows a user to request the number of other users who were provided or shown the user's content or posts.

2. Provide, upon request, a user with the number of other users who were provided or shown content or posts.

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(f) A social media platform must:

1. Categorize algorithms used for post-prioritization and shadow banning.

2. Allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content.

(g) A social media platform must provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually the opt out opportunity in subparagraph (2)(f)2.

(h) A social media company may not apply or use post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate as defined in s. 106.011(3)(e), beginning from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation of this paragraph. Social media platforms must provide users with a method to identify themselves as qualified candidates, and may confirm such qualification by reviewing the website of the Division of Elections of the Department of State.

(i) A social media platform must allow a user who has been

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deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

(j) A social media platform may not take any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic enterprise is not a violation of this paragraph.

(3) For purposes of subparagraph (2)(d)1., a notification must:

(a) Be in writing.

(b) Be delivered via electronic mail or direct electronic notification to the user within 30 days of the censoring action.

(c) Include a thorough rationale explaining the reason that the social media platform censored the user.

(d) Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.

(4) Notwithstanding any other provisions of this section, a social media platform is not required to notify a user if the censored content or material is obscene as defined in s. 847.001.

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(5) If the department, by its own inquiry or as a result of a complaint, suspects that a violation of this section is imminent, occurring, or has occurred, the department may investigate the suspected violation in accordance with this part.

(6) A user may only bring a private cause of action for violations of paragraph (2)(b) or subparagraph (2)(d)1. In a private cause of action brought under paragraph (2)(b) or subparagraph (2)(d)1., the court may award the following damages to the user:

(a) Up to $100,000 in statutory damages per proven claim.

(b) Actual damages.

(c) If aggravating factors are present, punitive damages.

(d) Other forms of equitable relief.

(e) If the user was deplatformed in violation of paragraph (2)(b), costs and reasonable attorney fees.

(7) For purposes of bringing an action under subsection (2) or subsection (6), each failure to comply with the individual provisions of subsection (2) shall be treated as a separate violation, act, or practice.

(8) In an investigation by the department into alleged violations of this section, the department's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

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(9) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 4. Subsection (2) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(2) Except as provided in s. 501.2041, a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect July 1, 2021.

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A bill to be entitled

An act relating to public records; amending s. 287.137, F.S; providing a public records exemption for certain investigations by the Attorney General or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; defining the term "proprietary information"; providing for future legislative review and repeal of the exemptions; amending s. 501.2041, F.S; providing a public records exemption for certain investigations by the Department of Legal Affairs or a law enforcement agency into violations of certain social media actions; providing that confidential and exempt information may be disclosed under specified conditions; requiring certain information to remain confidential and exempt after an investigation is complete or ceases to be active; providing for future legislative review and repeal of the exemptions; defining the term "proprietary information"; providing a statement of public necessity; providing a contingent effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 287.137, Florida Statutes, as created by HB ____,2021 Regular Session, to read:

287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—

(8)(a) All information received by the Attorney General pursuant to an investigation by the Attorney General or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the Attorney General:

1. In the performance its official duties and responsibilities;

2. For print, publication, or broadcast, if the Attorney General determines that the release would assist in notifying the public or locating or identifying a person who the department believes to be a victim of a data breach or an improper disposal of customer records, except that information made confidential and exempt pursuant to paragraph (c) may not

be released as authorized under this subparagraph; or

3. To another governmental entity in performance of its official duties and responsibilities.

(c) Once an investigation is completed or once an investigation ceases to be active, the following information received by the Attorney General shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business's data security.

5. Information that would otherwise disclose a business's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the business.

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily

ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (8) is added to section 501.2041, Florida Statutes, as created by HB ____, 2021 Regular Session, to read:

501.2041 Unlawful acts and practices by social media platforms.—

(8)(a) All information received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the performance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that the release would assist in notifying the public or locating or identifying a person who the department believes to be a victim of a data breach or an improper disposal of customer records, except that information made confidential and exempt pursuant to paragraph (c) may not be released as authorized under this subparagraph; or

3. To another governmental entity in performance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a business's data security.

5. Information that would otherwise disclose a business's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the business.

2. Is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive business of the business that is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 1, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs and the Attorney General pursuant to a notification of a violation of ss. 287.137 and 501.2041, Florida Statutes, or received by the Department of Legal Affairs and the Attorney General pursuant to an investigation by the department or a law enforcement agency, be made confidential and exempt

from s. 119.07(1), Florida Statutes and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.172, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the Department of Legal Affairs and the Attorney General to effectively and efficiently administer ss. 287.137 and 501.2041, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the Department of Legal Affairs and the Attorney General would undo the specific statutory exemption protecting that information.

(3) An investigation of social media platform activities is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial information. Such information could be used for the purpose of identity theft.

(4) Information received by the Department of Legal Affairs and the Attorney General and information may contain proprietary information, including trade secrets, about the

security of the breached system. The release of the proprietary information could result in the identification of vulnerabilities. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including trade secrets, through a public records request could destroy the value of the proprietary information and cause a financial loss to the business submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the entity supplying the proprietary information in the marketplace.

Section 4. This act shall take effect July 1, 2021, if HB ___ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

DRAFT

Social Media and Society Presentation

Social Media and Society

February 17, 2021

Andrew Selepak, PhD

- Lecturer in the Department of Telecommunication, UF College of Journalism and Communications
- Program Coordinator for the Master's in Mass Communication with a specialization in Social Media since 2013
- PhD in Mass Communications, University of Florida, 2011
- MA in Communication, George Mason University, 2006
- BA in American History, University of Virginia, 2001

- MMC 3630 – Social Media & Society

Traditional Media
vs.
Social Media

UF

Traditional Media

- One-way communication. The media talks to the audience but never the other way around.
- Temporary messaging. Once the message is sent, it is almost never repeated.
- Significant production costs.
- Little to no audience tracking (Nielsen)

Social Media

- Two-way communication which leads to open conversations.
- Messages are recorded for posterity and easily discovered again
- Little to no production costs.
- Some of the most sophisticated analytics ever.

Top Social Media Networks - 2020

Ranked by number of active monthly users.



What is Social Media?

Social Media is the social interaction among people and brands using mobile and web-based technologies where they create, share, discuss, exchange information, and modify content in virtual communities that are evolving day to day

More than platforms and more than the Internet but everything connected to the Internet too

Social Media allows not just for content consumption

BUT also content creation

The role of media in society



To act as a public sphere

- A public sphere can be defined as:

"A discursive space in which individuals and groups congregate to discuss matters of mutual interest and, where possible, to reach a common judgment."

But traditional media was limited in being a public sphere where only the media was able to speak, and the public had to listen

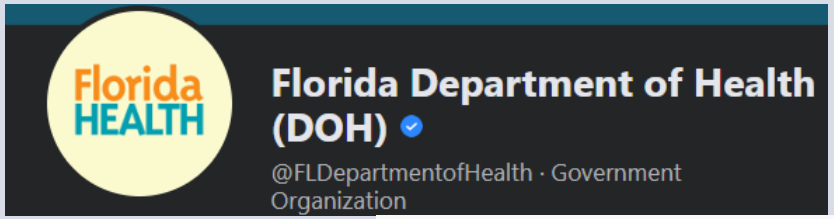
The democratizing potential of Social Media and the Internet

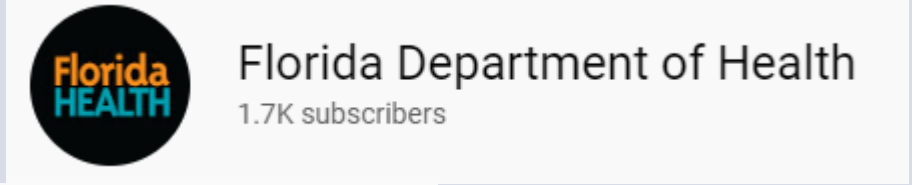
These features enhance democratic potential:

- Access to means of production
- Ability to circulate ideas and content without barriers of distance, time and money
- Control the flow of information
- Removes potential for agenda setting by media
- Breaks down barrier between producer and consumer and lessens power of mass media
- Diversification of public sphere
- Increased internal and external plurality (more content and more sources)
- Anonymity can remove social stereotypes and hierarchy

The Government and Social Media

- Most government officials have a website, Facebook, Twitter, Instagram, and YouTube pages to provide information to their constituents quickly and easily
  - Government agencies have them as well









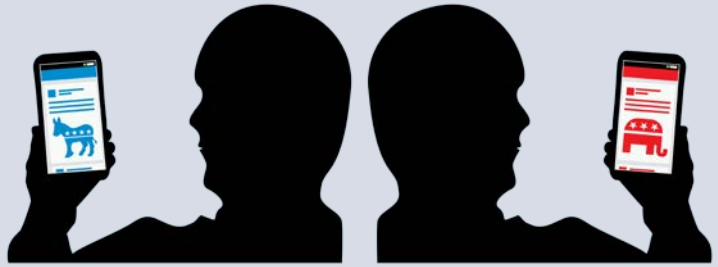


The other side…

There are several issues with so much Social Media:

- Information overload and lack of interest
- Lack of quality in online discussions
- Lack of accountability and rise of extreme discourse
- Dependent on equal access where all voices can be heard
    - Otherwise, it is equivalent to lacking a voice/vote
- Assumption of independence and autonomy from platforms
- Internet censorship
- Fragmentation of public sphere into tribalism and private interests
    - Polarization

Why Polarization?



- Social media amp up moral and emotional messages and responses by rewarding topics that receive the most engagement

How Does Facebook Choose What To Show In News Feed?

$$\text{News Feed Visibility} =^{*} \underset{\text{Interest}}{I} \times \underset{\text{Post}}{P} \times \underset{\text{Creator}}{C} \times \underset{\text{Type}}{T} \times \underset{\text{Recency}}{R}$$

Interest
Interest of the user in the creator

Post
This post's performance amongst other users

Creator
Performance of past posts by the content creator amongst other users

Type
Type of post (status, photo, link) user prefers

Recency
How new is the post

* This is a simplified equation. Facebook also looks at roughly 100,000 other high-personalized factors when determining what's shown.

The Result

- When we are bombarded with sensational political posts we tend to:
  - Organize ourselves into digital communities based on tribal identities and conflicts
    - Consensus building becomes more difficult
  - We then live in online filter bubbles that only expose us to ideas we already agree with
    - Confirmation bias
      - We are more likely to seek out and agree with views that align with our pre-exiting beliefs
      - We select Social Media accounts that make it easier to listen to groups or individuals who validate our worldviews

Echo Chambers

- Allow Social Media and Internet users to filter who they interact with and what they see on their feeds, potentially reinforcing more extreme ideologies by filtering out oppositional viewpoints
  - This can occur on all social media platforms



But it doesn't have to be this way

- What Social Media can be:
- Information sharing
  - Narrow the distance between the people and journalists / politicians / and celebrities and influencers.
  - Encourage lively, immediate and spirited discussion.
  - A vital information-gathering and information-delivery tool.

- Social Media can expose people to what is going on in the world beyond traditional "gatekeepers"
  - Also allows us to be our own "gatekeepers" by following the sources and outlets we want to get only the content we want.
  - And allows us to create information that others consume.

This potential comes at a cost – Nothing in life is free

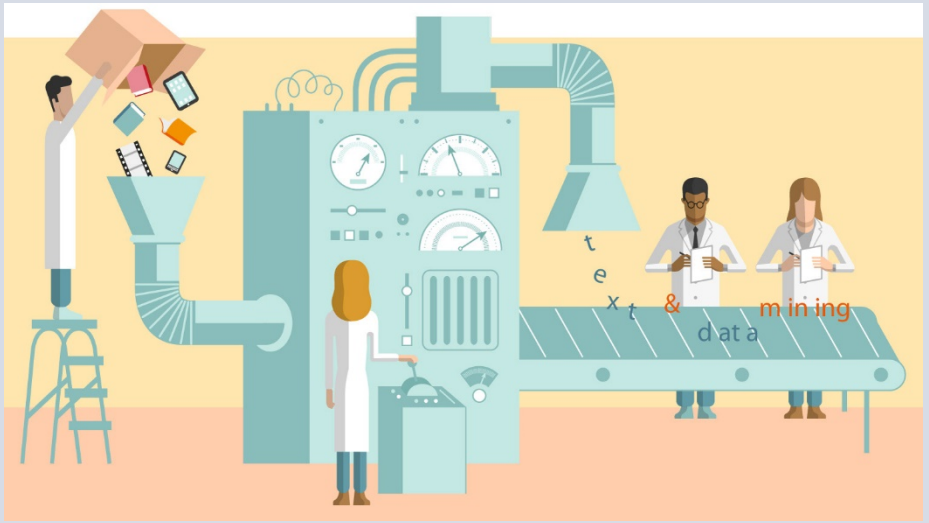
- Free accounts come at a price – the price is data
  - Users often sign away their privacy rights as soon as they click “agree”

- User data is used in aggregate to improve services
  - Which is good

- User data is used to advertise products and services for the profit of the social platforms
- User data is also used to manipulate behavior
  - Which is bad

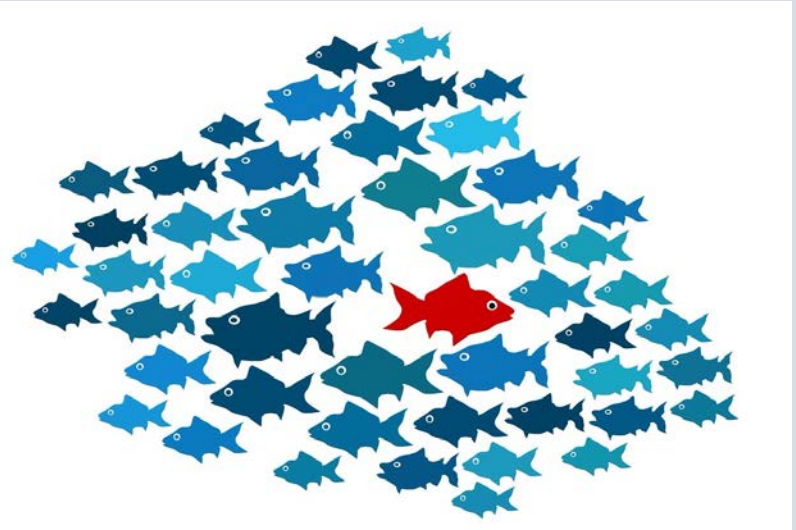
Data Mining

- Data mining refers to the process of extracting information from digital documents and services
  - Can also be collected from offline services and products



- Data mining can be used to construct predictive models of behavior

How Data Mining is used



- *Anomaly detection*
- In a large data set it is possible to get a picture of what the data tends to look like in a “typical” case.
- It can then be determined if something is notably different from this pattern.
- For instance, a company could model purchases and use anomaly detection to identify specific purchases that differ from previous trips.
  - If you only bought men’s deodorant, shaving cream, and shampoo and suddenly bought women’s deodorant

How Data Mining is used

- *Association learning:*
- The type of data mining that drives the Amazon recommendation system.
  - For example, this might reveal that customers who bought a cocktail shaker and a cocktail recipe book also often buy martini glasses.
- These types of findings are then used for targeted coupons/deals or advertising.

- This same form of data mining (just a lot more complex) is behind Netflix movie recommendations.

Example: Data Mining used to alter behavior

- Facebook might be interested in predicting future engagement for a user based on past behavior
  - Factors like the amount of personal information shared, number of photos tagged, friend requests sent or accepted, comments, likes, etc., could all be included in such a model
    - This data can be used to encourage more of the behaviors that lead to increased engagement and time spent on Facebook

This use of data becomes Surveillance Capitalism

- Surveillance capitalism is an economic system centered around the commodification of personal data with the core purpose of profit-making
- Since personal data can be commodified it has become one of the most valuable resources on earth

Data for profit

- Social Media platforms use our data to sell or share it to third parties for profit
  - The owners of the site/app/platform determine what information to collect from users, and how to share it
    - Based on a Terms of Service that often changes
      - Notification emails and pop ups about updates to Terms of Service are often ignored or not understood
        - Then users get upset when they find out how their information was used

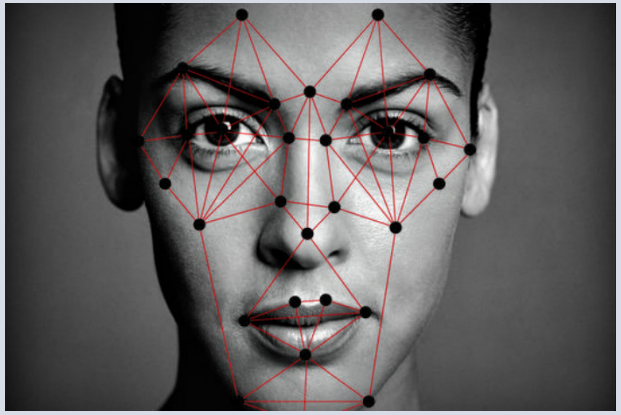
Why do we have a problem with privacy?

- Many people have no idea how social networks operate when it comes to privacy and data collection
  - Most don't want to take the time to read the user agreements/Terms of service because it's boring or takes too long

> We don't charge you to use Facebook or the other products and services covered by these Terms. Instead, businesses and organizations pay us to show you ads for their products and services. By using our Products, you agree that we can show you ads that we think will be relevant to you and your interests. We use your personal data to help determine which ads to show you.

Data that the Internet and Social Media continuously can collect from you:

- IP address
- Browser Type
- Operating System
- Referring Web Page
- Pages Visited
- Geographic Location
- Mobile Carrier
- Device ID
- Application ID
- Search Terms
- Cookie Information
- Facial Recognition



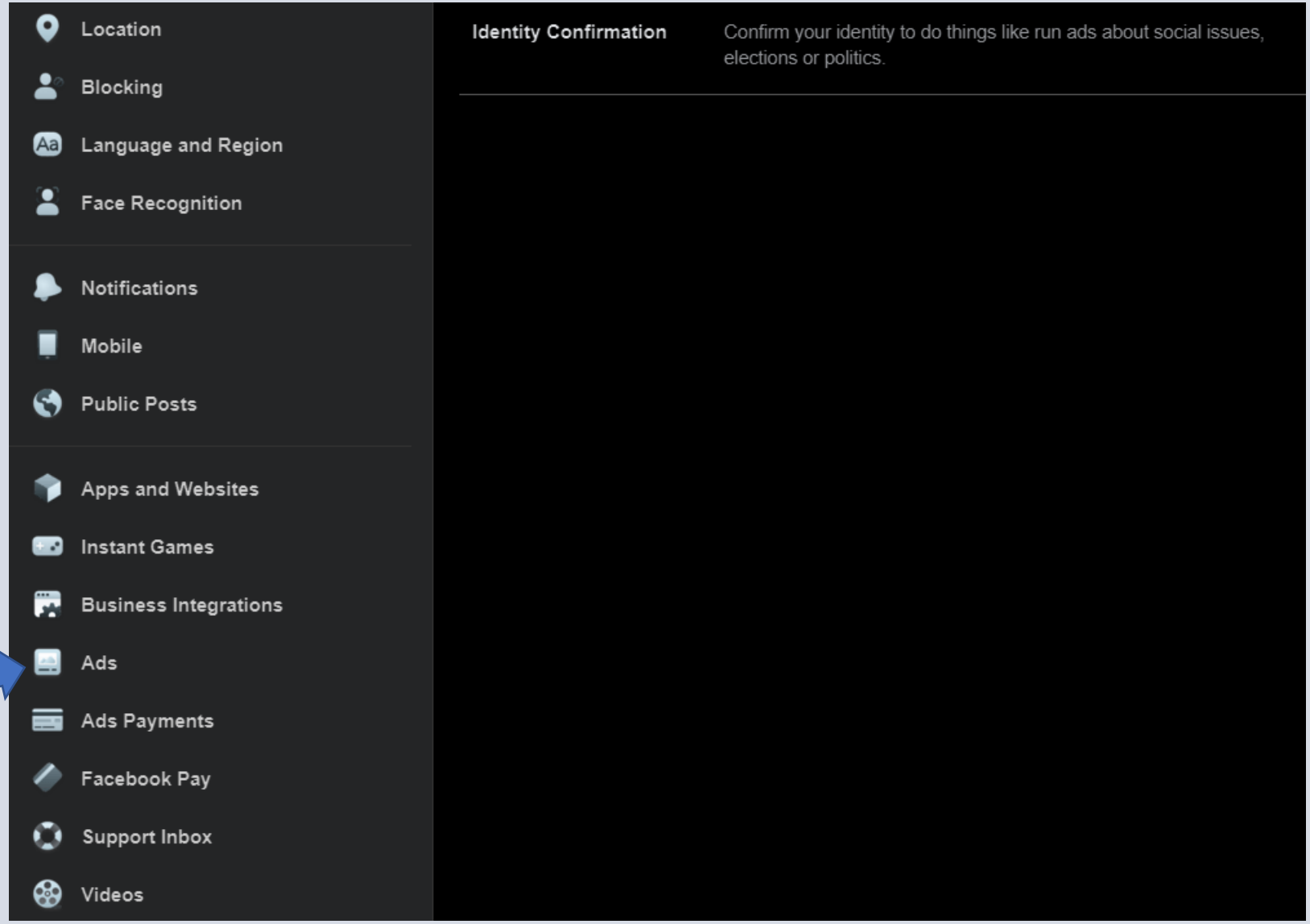
Example: Ad preferences on Facebook

- Shows what Facebook thinks a user is “like” which explains why we see the ads we do

- Companies, the Internet, and Social Media are collecting this data and Social Media platforms are making the data useful to ad buyers
  - We are targeted by behavioral, demographic, geographic, and psychographic data about us

What do they know about you?

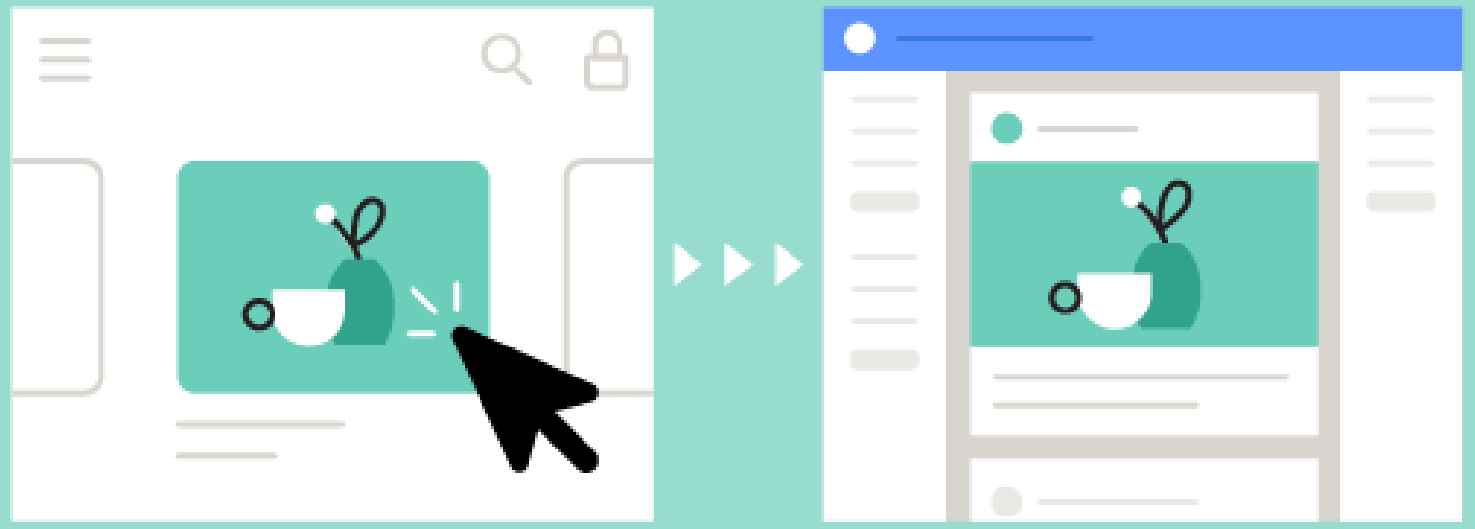
- On Facebook
- Go to Settings & Privacy
- Then Settings
- The click on Ads



And there is this from Facebook

Data about your activity from partners

Personalized ads based on your activity on other websites, apps or offline



To show you relevant ads, we use data that advertisers and other partners provide to us about your activity on their websites and apps, as well as certain offline interactions, such as purchases. For example, we may show you an ad for a shirt based on your visit to a clothing website. We never sell your data. Learn More

How did we get to this point in 2021:

We must go back to 1996

The Government created Section 230

- Section 230 is part of the Communications Decency Act (CDA) of 1996
- The most significant portion:
- “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

Who it applies to

- Not just Social Media
  - Also applies to :
    - Dating sites and apps
    - Amazon and Walmart product pages with reviews
    - Yelp restaurant reviews
    - Any online forum
    - Any comment section on a website

What does Section 230 mean in practice?

- Users, and not the service provider hosting content, are responsible for what the user says online
  - Even if the provider engages in some amount of content moderation

- Section 230 essentially also allows each company to moderate content as it sees fit, in whatever manner best suits its business and its users

Without Section 230

- Any company that engages in any form of content moderation would be liable for user content
  - This would include removing spam or taking down inappropriate content in the comment sections of a blog, website, or Social Media post

The Internet before the CDA

- America Online
- Blogs
- Amazon
- eBay
- Yahoo

Internet speeds in the 1990s using a 56 KB/s dial-up modem:

- To download a low-quality 700 MB movie would take 3-5 days

NETFLIX | Help Center

Internet download speed recommendations per stream for playing TV shows and movies through Netflix.

•0.5 Megabits/s - Required broadband connection speed
•1.5 Megabits/s - Recommended broadband connection speed
•3.0 Megabits/s - Recommended for SD quality
•5.0 Megabits/s - Recommended for HD quality
•25 Megabits/s - Recommended for Ultra HD quality

The Internet since the CDA until 2003

- Google – 1998
- Yahoo Messenger – 1999
- Wikipedia, iTunes, and the iPod – 2001
- LinkedIn – 2002
- Myspace and Skype – 2003

The Internet is human creativity

- Since the dawn of time through 2003, human civilization generated approximately 5 exabytes of aggregate information (1 Exabyte of data is approximately the same as 20-million movies)

  - 1000 Bytes = 1 Kilobyte
  - 1000 Kilobytes = 1 Megabyte
  - 1000 Megabytes = 1 Gigabyte
  - 1000 Gigabytes = 1 Terabyte
  - 1000 Terabytes = 1 Petabyte
  - 1000 Petabytes = 1 Exabyte

We now produce more than 5 exabytes of info and data every 48 hours

2020 This Is What Happens In An Internet Minute



The Internet since 2003

- Facebook, Podcasting, Flickr, and Digg – 2004
- YouTube and Reddit – 2005
- Twitter – 2006
- iPhone, Tumblr, and Twitter hashtags – 2007
- China's Weibao, Foursquare, Grindr – 2009
- Instagram and Pinterest – 2010
- Snapchat and Google Plus – 2011
- Tinder – 2012
- Vine and Google Hangouts – 2013
- Periscope – 2015
- TikTok – 2018
- Parler and Clubhouse – 2020

The problem for companies that are online

- Companies can do no moderation whatsoever
  - No moderation means more undesirable content, spam, pornography, violent content, hate speech, and harassment, making the internet a much less useful and safe place

- Or -

- Companies can heavily restrict user content since they would be liable
  - Moderating every user message and post
  - Rejecting all speech that is controversial or critical
    - Or content a moderator thinks is controversial or critical

Moderation Costs

- Moderating content can lead to expensive litigation if any disagreement or dislike of a content moderation occurs

- The scale of moderation for a platform like Facebook with over 2.6-billion users would make it cost prohibitive
  - Multiple languages
  - Images
  - Videos

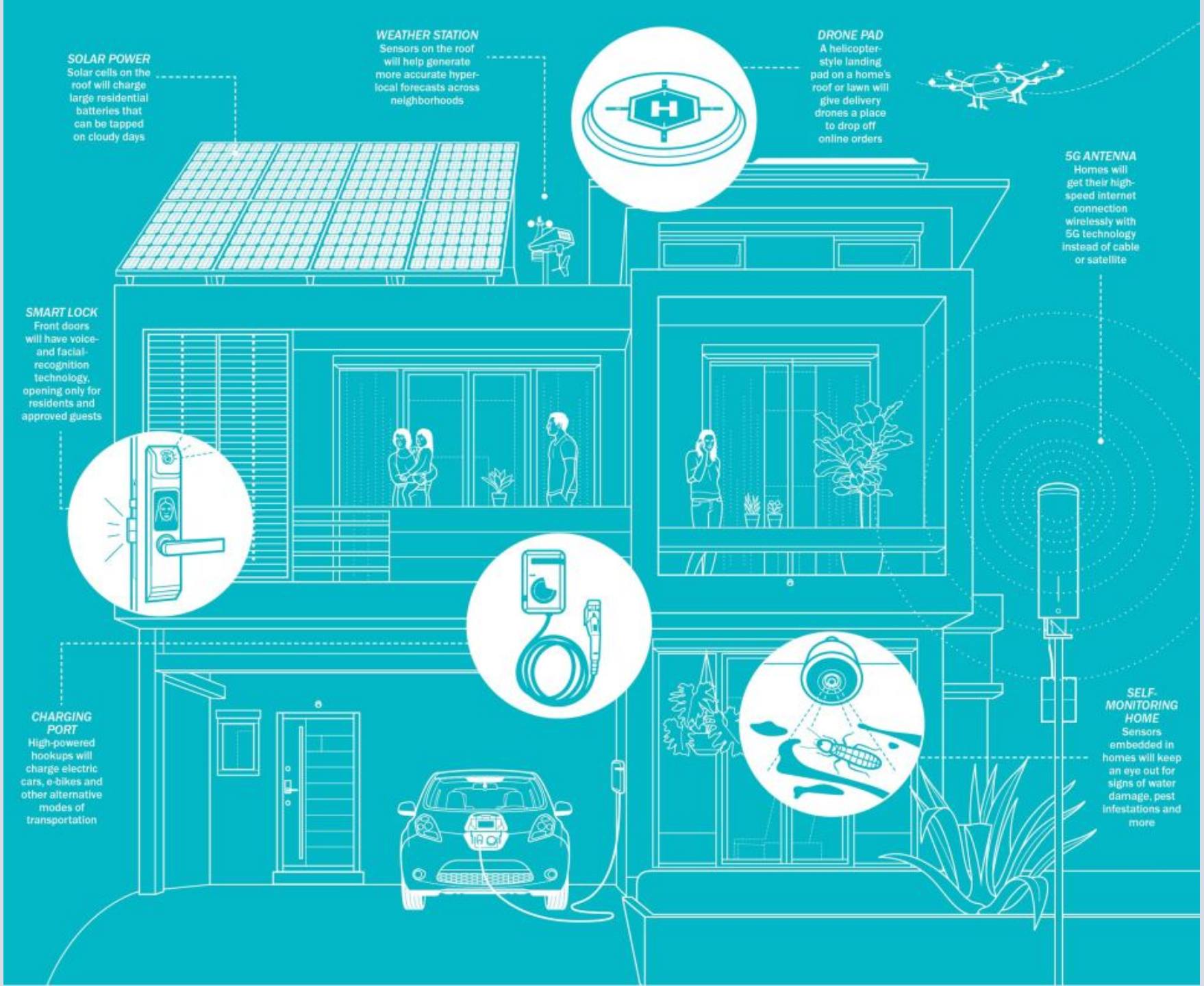
Only the beginning

- 4G enabled quality video streaming and calling on the go
  - But the signal could be weak
  - Or the network could be congested which could cause a weak signal

- 5G will eliminate the congestion
  - It will make the world connected in unprecedented ways with the Internet of Things
  - It will be possible to have more devices working, reliably, securely and uninterrupted in the same area
    - All while collecting more data

5G in our home – IOT

63 million American homes will qualify as “smart” by 2022



Why is the Social Media question so difficult?

- There is tremendous money in Social Media and the Internet
- Social Media and online companies have tremendous influence
- Social Media is now part of our every day lives
- Social Media and censorship has become a political issue
- Not enough is known by the public about how these companies operate
  - And because the public doesn't understand, they are looking at those in charge

What is needed?

- Greater media literacy and Social Media literacy
- An understanding that Social Media does not represent the real world:
  - 10% of users produced 92% of all tweets from U.S. adults (Pew Research Center, 2020)
- For big tech to be more transparent in their moderation practices including who does it and how
- Consistency by big tech in the enforcement of their moderation policies
- Terms of Services policies that are clear and easy to understand for the user