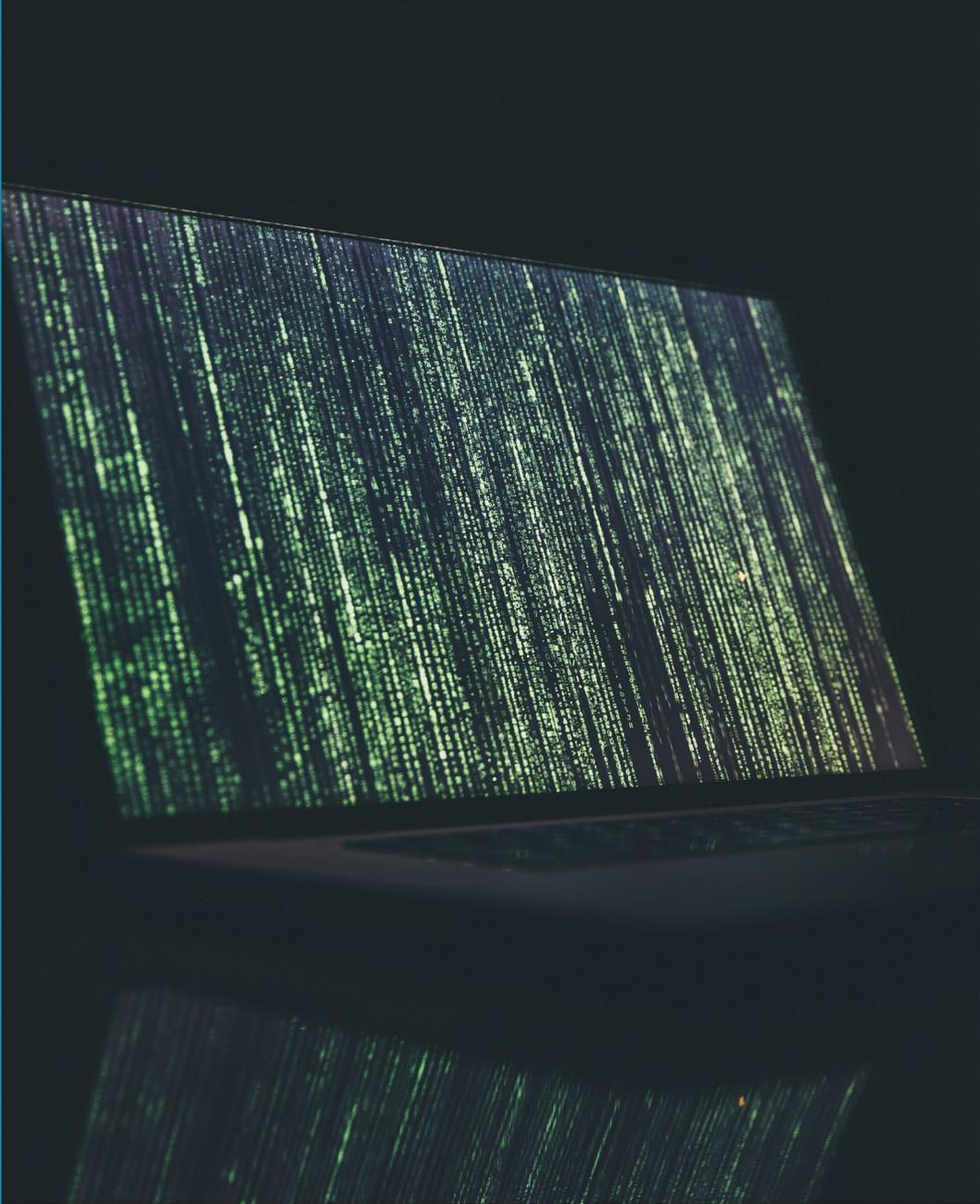


THE NEW CENTER

Policy Paper

Think Centered



Take on Big Tech

PROTECTING PRIVACY AND PUBLIC DISCOURSE

NEW CENTER SOLUTION:

Take on Big Tech

PROTECTING PRIVACY AND PUBLIC DISCOURSE

In the information age, personal data is more valuable than it has ever been, and data privacy has never been a more pressing issue. In 2018 there were over 1,200 data breaches in the United States; those breaches exposed over 400 million records of sensitive personally identifiable information.¹ Yet the United States has no national legal framework governing how data can be collected and used, or what security standards must be enacted to protect it. The Federal Trade Commission (FTC), which has purview over many privacy issues, faces serious procedural and legal challenges preventing it from adequately doing its job at a moment where it is becoming clear that companies cannot properly self-regulate their data collection practices.

Alongside these concerns about data privacy are questions about the effects that big tech platform companies have on our public discourse. As the primary news source for tens of millions of Americans, social media companies like Facebook, Twitter, and YouTube increasingly shape how we think. Yet they face no accountability for their content moderation practices which, though well-intended, can unintentionally censor legitimate speech and provide insufficient transparency about what is or isn't an acceptable form of expression.

We've allowed private companies tremendous influence over our privacy and public discourse, but Washington and the tech industry have yet to settle on a sustainable or sensible framework for how to manage these concerns. This needs to change. The New Center proposes:

- Federal legislation to protect online privacy
- Allowing the FTC to issue trade rules under the guidelines of the Administrative Procedure Act (APA), or creating a new privacy watchdog organization with APA rulemaking ability
- A legal framework to promote transparency in content moderation
- A system of algorithmic accountability for AI use in moderating online content
- The restoration of the Office of Technology Assessment

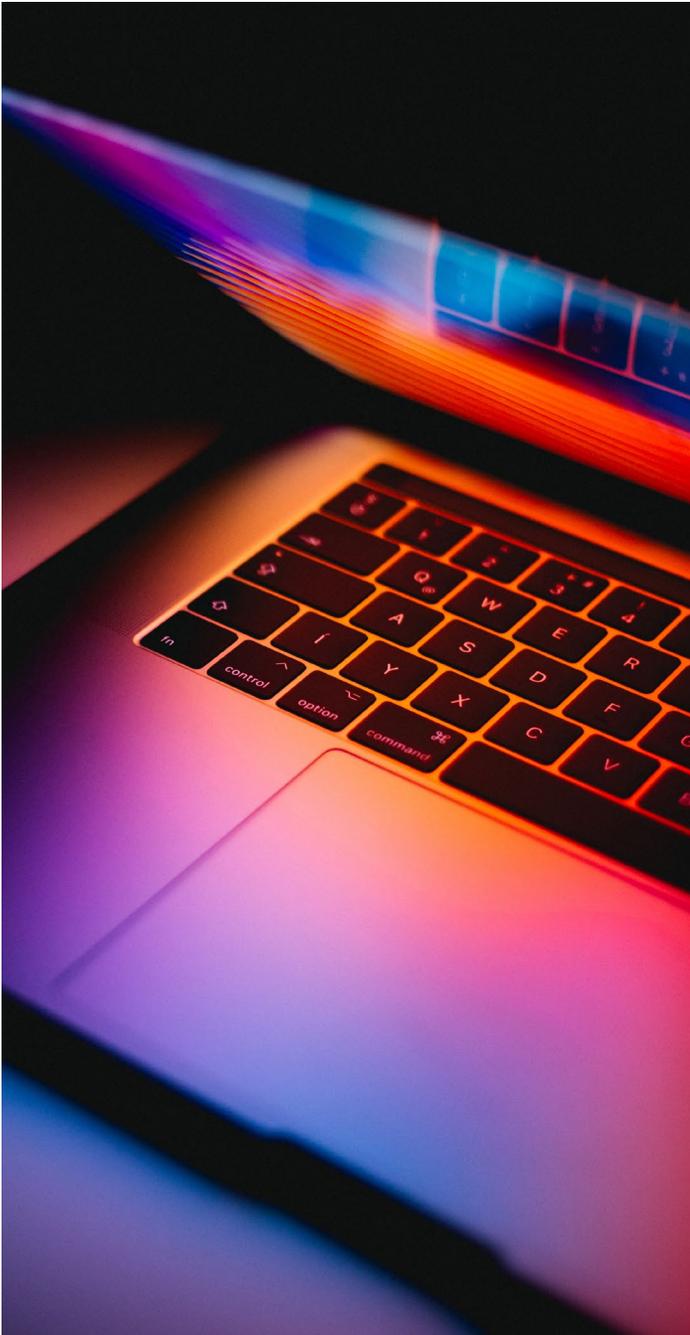
This paper was developed with the research and writing contributions of The New Center policy analyst Evan Burke.



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144         > Instagram
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146     </li>
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152 renderWhatsNewLinks() {
153   return (
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175       target="_blank"
176       rel="noopener noreferrer"
177     >
178       {title}
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182 }
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188     <Icon
189       type="logo"
190       className={style.footerSubLogo}
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201     <div className="container">
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Protect People's Privacy

Federal Legislation to Protect Online Privacy



Large tech companies have an enormous financial incentive to amass as much personal data as possible from their consumers. Because of how precisely their troves of data allow them to target users with advertisements, Google and Facebook collected 63% of all online ad revenue in 2017.² Yet headline after headline has demonstrated that they and other companies do not take the necessary precautions to safeguard the data they collect. Comprehensive federal privacy legislation should be enacted to give consumers more control over their personal data, and it should include:

- A **“right to be removed” online**. Americans should have the option to remove their personal data from an online platform’s database, just as consumers once had the option to have their phone number removed from the local phone book.
- **Opt-out mechanisms for data sales and third-party data use**. Customers should have the option to withdraw consent and prevent internet companies from selling their information or using it for targeted advertising.
- **Data collection disclosure**. Internet companies should be required to explicitly disclose to consumers information about the types of personal data they collect, how they use that data, and the types of third parties with whom they may share the data.
- A **right to request all personal data collected by tech companies**. A company should be required to provide the requested information via a file download.
- **Prompt data breach notifications**. Internet companies should be required to notify all affected consumers in the case of a data breach within 72 hours.

A Federal Privacy Watchdog with Teeth

The United States currently has no national privacy watchdog organization. The Federal Trade Commission is responsible for protecting consumers against data privacy violations, but it is woefully ill-equipped for the task. Most U.S. government agencies issuing new rules follow a standardized process outlined by the Administrative Procedure Act. But the FTC must instead follow a rigorous, 15-step process called the Magnuson-Moss procedures to issue new trade rules.³ Magnuson-Moss is so cumbersome that the FTC has issued no new trade rules since 1980, and amendments it has made to existing trade rules using Magnuson-Moss procedures have taken an average of over five years to complete.⁴ By contrast, FTC rulemakings when Congress waived the Magnuson-Moss procedures took an average of 287 days to complete.⁵

Recognizing that it couldn't possibly keep up with the pace of technology innovation by issuing a new trade rule every few years, the FTC has instead tried to pursue enforcement actions against companies committing data privacy violations on a case-by-case basis. The Commission has alleged that inadequate data security constitutes an unfair business practice under Section 5 of the FTC Act, but this argument is exceedingly difficult to prove in court.⁶ There are also far more cases of improper data management than the FTC can address, making the enforcement actions it does undertake seem arbitrary.⁷ The result of the FTC's current efforts is a regulatory system without a clear definition of what is or isn't a data privacy violation.

If Congress passes a nationwide data privacy bill, we will need a federal commission that can actually enforce it. This could be done in one of two ways. Congress could remove the restrictions in place on the FTC and restore its rulemaking abilities under the Administrative Procedure Act, and the FTC could reorient itself to prioritize its oversight of the tech industry. Alternatively, a new Federal Data Privacy Commission, unburdened by Magnuson-Moss rules and singularly focused on privacy, could take the mantle from the FTC.

INFORMATION



A Lot Can Happen in Five Years

In the average time it takes the FTC to amend a trade rule:



100+

Google acquired over 100 companies.⁸



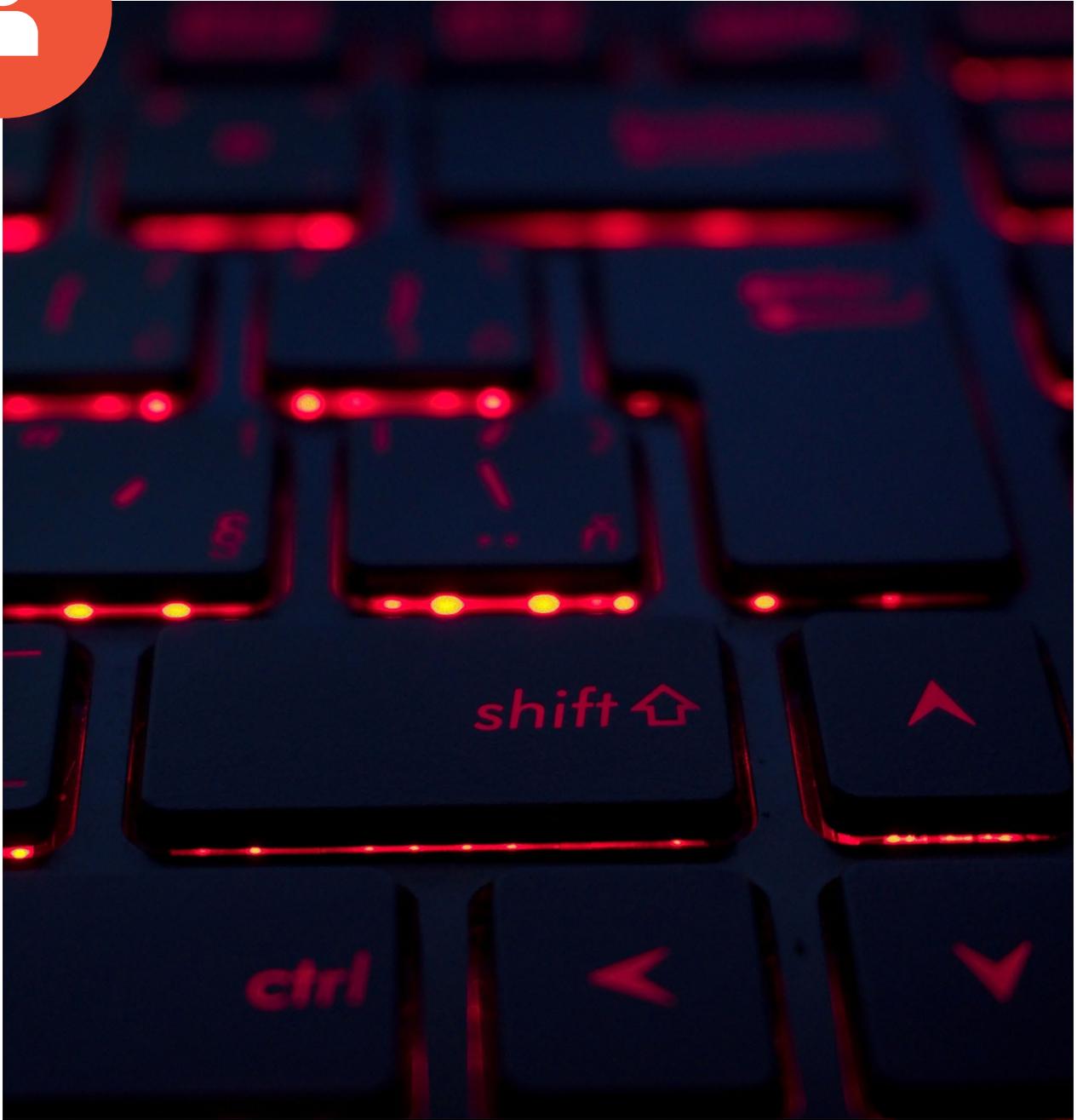
\$232 billion

Amazon's net sales revenue tripled from \$74 billion to \$232 billion.⁹



2.5 billion

Facebook acquisitions Instagram and WhatsApp's combined monthly active user base grew from 300 million to 2.5 billion. That's more monthly active users than Facebook has.¹⁰



Protect Public Discourse

Toward Real Transparency

Large tech companies claim they are being more transparent about how they handle your data and decide which content can exist on their platforms, but often they just provide the illusion of compliance: with long, impenetrable terms of service or standards that no one reads.

At a minimum, the next president should make clear he or she expects large tech companies to agree upon and adhere to common standards that establish a clear, standardized process for reviewing and removing material from online platforms.

These standards should include:

1. Meaningful Notice¹¹

Anyone whose content is removed from an online platform should be provided:

- A notice from the platform about the community standard violated
- A copy of the specific language violating the standard
- A characterization of who reported the post; i.e. whether it was a government, fellow user, or automated system

2. Appeal¹²

Users should have the recourse to appeal any content takedown, and that appeal should be examined by a human or panel of humans who weren't involved in the original decision.

3. Regular Reports¹³

Tech platforms should make regular reports available to the public that detail:

- The amount and types of content removed
- Which community standards were violated
- Whether the content was flagged by a user, human moderator, or bot

4. Pay the People Who Are Harmed

Tech companies often must pay fines to the government for misbehavior, but customers never see any of it. Customers who have their content taken down suffer real harm, and they should be compensated for it. If tech companies agreed to pay a small fine to each customer for each day their content was unjustifiably taken down, they might just do it less often.



Make AI Accountable

Tech companies necessarily use artificial intelligence (AI) to screen the reams of content that exist and are created across their platforms. However, these AI systems are black boxes. Consumers don't understand how or why decisions are made, and the AI's decisions are often wrong. We need real standards to make AI—and the companies behind it—accountable.

The nonpartisan Center for Data Innovation recently proposed a framework for regulating AI systems on the principle of 'Algorithmic Accountability'.¹⁴ The FTC could draw on this framework to enact standards for the use of AI in moderating online public discourse.

Such standards could require:

1. Legal Responsibility for the Operator

Liability for a faulty algorithm shouldn't lie with individual developers, who can't reasonably be expected to predict with complete accuracy the behavior of a program interacting with billions of users. Instead, the companies using the algorithm should bear legal responsibility to test it regularly and ensure it's functioning as intended.

2. Liability for Consumer Inquiry

The FTC could consider cases of unnecessary censorship of users by algorithms on the existing basis of consumer injury through unfair business practices. In particular, the FTC should focus on cases of demonstrable negligence of tech companies to ensure algorithms are working as intended, to maintain transparency with respect to their AI operations, and to identify and redress instances of improper censorship.



3. Transparency

When introducing new AI technologies, companies should conduct impact assessments similar to those outlined by New York University's AI Now Institute.¹⁵

- These assessments should test algorithms for bias, logical errors, and discrimination based on race, gender, ethnicity, or political belief.
- These assessments should happen before launch and in regular intervals after launch and should be made available to the public for review.

4. Penalties for Not Fixing Bad Outcomes

Tech companies should be able to demonstrate to regulators that incorrect decisions from AI systems are remedied as quickly as possible. Larger patterns of error should be investigated in a timely manner. Failure to do so should result in a significant fine.

Congress Needs to Get Smart on Tech

Recent congressional hearings featuring tech company executives have revealed that too many members of Congress don't understand how big tech companies operate or the scope and scale of the problems they present. In one infamous example from 2018, a senator grilling Facebook CEO Mark Zuckerberg at a hearing did not appear to know that the company made money by selling ads.¹⁶

Once, Congress had a resource for objective analysis on pressing matters raised by new technologies, the Office of Technology Assessment. The OTA was shuttered in 1995, right before the advent of the modern internet. It needs to be brought back, and the next president should include it in their first budget request to Congress.



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