Press Release

DETOUR Act Gives Sweeping Powers to FTC

ALLISON EDWARDS | APRIL 15, 2019

Last week Senators Mark Warner and Deb Fischer introduced the Deceptive Experiences To Online Users Reduction (DETOUR) Act, which seeks to prohibit deceptive practices by large websites. While the bill's goals are laudable, its language is ambiguous and gives the Federal Trade Commission (FTC) the legal pretext to second guess every design decision by online companies, argues Director of Technology and Innovation Policy Will Rinehart.

An excerpt:

> *The most important part of this bill is Section 3, which makes the manipulation of user interfaces an unfair and deceptive act. Policing unfair and deceptive acts constitutes a key pillar of FTC's enforcement authority, and the agency often cites this particular authority when bringing privacy cases. Section 3 of the DETOUR Act doesn't create a new, narrow authority for policing manipulating, but rather massively extends current FTC authority.*
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> *These provisions give the FTC a tremendous amount of ill-defined authority. For example, what exactly does it mean to design an interface with the substantial effect of impairing user autonomy to obtain user data? According to critics of tech companies such as Matthew Yglesias and Zeynep Tufekci, every social media site manipulates their user interface to get data—meaning they all would presumably be illegal. Even if the most expansive interpretation isn't taken, it is still the case that "obscuring, subverting, or impairing user autonomy, decision-making, or choice to obtain consent or user data" is an imprecise phrase and would be subject to substantial legal battles.*

Read the analysis.