

Western New England Law Review

Volume 44 44
Issue 1

Article 1

2022

FOREWORD

Edward J. Markey

Follow this and additional works at: <https://digitalcommons.law.wne.edu/lawreview>

Recommended Citation

Edward J. Markey, *FOREWORD*, 44 W. New Eng. L. Rev. 1 (2022), <https://digitalcommons.law.wne.edu/lawreview/vol44/iss1/1>

This Foreword is brought to you for free and open access by the Law Review & Student Publications at Digital Commons @ Western New England University. It has been accepted for inclusion in Western New England Law Review by an authorized editor of Digital Commons @ Western New England University.

WESTERN NEW ENGLAND LAW REVIEW

Volume 44

2022

Symposium

FOREWORD

U.S. SENATOR EDWARD J. MARKEY

On October 29, 2021, the *Western New England Law Review* hosted its annual Symposium: *Post Pandemic Digital World: Platforms, Algorithms, Cybersecurity, and Justice*. This event aimed to begin a larger conversation about approaches to regulation of digital platforms, at a time when they are rapidly gaining significance, and the issues they create are becoming increasingly complex.

Today, people are more dependent on technology to work and communicate with one another. Social media and financial platforms are at the center of these financial communications. While these platforms, on their face, are a brilliant way to connect the world, many of these platforms have become ground zero for breeding intolerance, misinformation, ignorance, violence, theft of personal information, and other criminal activity. Demand for self-regulation and government regulation from across the political spectrum has led to congressional hearings and debates on how to best address the spread of this activity. However, efforts to combat these issues have reached an impasse, leaving many platforms with only limited regulation.

The *Western New England Law Review* would like to thank U.S. Senator Edward J. Markey for his contribution to our event. Senator Markey is leading the way in telecommunications technology policies, and he joined us to speak about these issues and one potential solution: the Algorithmic Justice and Online Platform Transparency Act. The following is Senator Markey's keynote address:

Hello and thank you to Western New England University School of Law for inviting me to be a part of today's event. Thank you to Professor Taub for that introduction. Thank you, Dean Setty, for your leadership. And thanks to all the students on the *Western New England Law Review* who made today's event possible. You all have convened this symposium to discuss important topics about the challenges and promises in today's digital world.

And I want to focus on one critical element of today's online

ecosystem: algorithmic justice. From the products we buy to the political causes we support, almost every aspect of Americans' lives is influenced by the content they encounter online. And often, the posts and ads on your social media feed are different than the posts and ads on your sibling's, or your neighbor's, or your co-worker's feeds. Algorithms, the automated systems built into the infrastructure of powerful online platforms, have become some of the most influential and consequential parts of American life.

At the basic level, algorithms are the tools "Big Tech" uses to leverage the data they have gobbled up about us to achieve their goal of keeping us *glued* to their websites, so they can make more money. Algorithms decide what content we see. And what content we see is based on what Big Tech believes will grab our attention and make us come back for more. And here is the problem: many of these algorithms are responsible for *egregious* discrimination online. And to make matters worse, these Blackbox systems are hidden from public scrutiny.

That's why I've introduced the Algorithmic Justice and Online Platform Transparency Act. My legislation will rein in Big Tech by creating a new online transparency regime and by stopping the algorithmic abuses that are harming our society. In order to adequately hold Big Tech accountable for their failures and encourage their progress, we need a robust transparency regime that shines a bright light on how and why these platforms promote certain content and limit the reach of other content. My legislation requires websites to provide users with clear information about what parts of the websites use algorithms that amplify and recommend content, what types of data the algorithms use, and how the algorithms analyze certain types of data. Websites will also have to disclose how and why they take down certain content or limit visibility of content—which is known as content moderation.

But transparency isn't enough by itself. My bill also enacts outright bans on discriminatory algorithms. Historically, members of marginalized communities are hurt first, and worst, by new and emerging technologies. And we know that the digital cogs in Big Tech's machines often have built-in biases. For example, Google's advertising system has reportedly used algorithms that allow landlords to exclude individuals who are transgender or gender nonbinary from seeing certain job openings posted online. And Facebook has been credibly accused of using algorithms that limited people of various races and religions from seeing certain housing advertisements. My legislation would prohibit these discriminatory practices. It would also create a safety and effectiveness standard for online algorithms. In the same way that pharmaceutical companies can't just put a drug

2022]

FOREWORD

3

on the market and hope that it works and doesn't harm our bodies, powerful websites shouldn't be able to deploy algorithms without taking the necessary steps to determine that they won't harm users or have unintended consequences. Under this standard, for example, websites won't be able to use an algorithm for targeted employment ads without testing to make sure it won't exclude LGBT users.

In closing, I have long believed that we will create a promising digital future, if and only if, we put the principles of inclusion, equity, and nondiscrimination at the forefront. That has been central to my work on net neutrality; my work on closing the digital divide; my work combatting online surveillance; and my overall work promoting algorithmic justice. This is the new frontier in technology law. This is where we must go. It is absolutely imperative that we pass laws that move the whole discussion towards how *justice* must be protected when algorithms are being created by huge tech companies. That is the challenge of our time.

Thank you all for everything you are going to do on these issues.

