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Muted by the Machine: Expanding FTC Authority to Address Algorithmic Review Suppression

Aubrey Adams

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Aubrey Adams∗

As digital platforms increasingly shape consumer decision-making, the integrity of online reviews has become central to fair market competition. In 2024, the Federal Trade Commission (FTC) issued a final rule prohibiting deceptive practices involving consumer reviews, including traditional forms of review suppression. Yet the rule fails to address a more subtle threat: algorithmic review suppression.

This Note argues that algorithmic review suppression, where platforms use automated systems to downrank or obscure negative reviews, creates a misleading impression of product quality while evading existing regulation. Unlike traditional suppression, these practices operate invisibly under the guise of content curation, distorting consumer perception and influencing purchasing behavior.

The FTC's current framework leaves a critical gap. Its definition of review suppression does not include algorithmic practices, and its scope is limited to entities that sell products or services, excluding influential review-hosting platforms. As platforms like TikTok, Amazon, and Yelp shape consumer perception, this narrow approach undermines the rule's effectiveness.

To address this gap, this Note proposes three reforms: (1) expanding the definition of review suppression to include algorithmic manipulation, (2) requiring transparency in how platforms rank and display reviews, and (3) adopting a burden-shifting framework that requires platforms to demonstrate neutrality. Ensuring transparency and fairness in algorithmic review systems is essential to preserving consumer trust in the modern digital marketplace.

∗ Aubrey Adams is a third-year law student at Chapman University Dale E. Fowler School of Law, where she is actively involved in Moot Court, Mock Trial, and *Chapman Law Review*. She is incredibly grateful to Professor Abigail Patthoff for her guidance, support, and steady encouragement throughout her legal writing journey. She also wants to thank her parents for always believing in her, and her Nana and Papa for opening their home and making this experience possible.

I. INTRODUCTION

In July 2023, ByteDance, the parent company of the globally popular social media platform TikTok, launched its own book publishing imprint.[1] In recent years, TikTok has emerged as an influential platform in the literary world, boosting book sales through its "BookTok" community. BookTok is a community built on reader-made videos of book reviews, reactions, and recommendations.[2] These videos serve as "visual trailers" of books and "attract millions of views."[3] One marketing and publicity manager from Simon & Schuster compared this effect to other internet trends like 2014's viral ALS ice-bucket challenge, saying "these TikTok trends become a challenge in the same way, and you don't want to miss out on the zeitgeist, so you get the book that everyone's talking about."[4]

Authors who once dreamed of catching the attention of influential critics or securing prominent bookstore displays suddenly found their fates determined by teenagers and young adults passionately reviewing novels in short videos. These short videos draw attention to and turn certain titles into trends. These trends shape bestseller lists worldwide.[5] And those trends are dependent on TikTok's algorithm that determines what content

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1 Nancy K. Herther, *TikTok's Move into Publishing: Part 1–Social Media Enters a New Era*, CHARLESTON HUB (Jan. 24, 2024), https://www.charleston-hub.com/2024/01/tiktoks-move-into-publishing-part-1-social-media-enters-a-new-era/ [https://perma.cc/7G58-Z5HL].

2 *See* Alison Flood, *The Rise of BookTok: Meet the Teen Influencers Pushing Books up the Charts*, THE GUARDIAN (June 25, 2021, at 07:00 ET), https://www.theguardian.com/books/2021/jun/25/the-rise-of-booktok-meet-the-teen-influencers-pushing-books-up-the-charts [https://perma.cc/LL47-ZFY4].

3 *Id.*

4 *Id.*; *The ALS ICE Bucket Challenge: How It Started*, ALS ASS'N, https://www.als.org/ibc-how-it-started [https://perma.cc/E5K7-XYZM] (last visited Mar. 8, 2026).

5 David Barnett, *'I Can't Stress How Much BookTok Sells': Teen Literary Influencers Swaying Publishers*, THE GUARDIAN (Aug. 6, 2023, at 02:00 ET), https://www.theguardian.com/books/2023/aug/06/i-cant-stress-how-much-booktok-sells-teen-literary-influencers-swaying-publishers [https://perma.cc/S3Z2-CQM5]. One example of an author who has greatly benefited from the rise of BookTok is Colleen Hoover. *See* Alexandra Alter, *How Colleen Hoover Rose to Rule the Best-Seller List*, N.Y. TIMES (June 21, 2023), https://www.nytimes.com/2022/10/09/books/colleen-hoover.html [https://perma.cc/49LQ-BTJJ] (highlighting that the hashtag #colleenhoover has more than 2.4 billion views, which has led to a massive surge in book sales).

In 2022 alone, Colleen Hoover sold 14.3 million books, a 661% increase from the 1.88 million copies she sold before going viral the previous year. Marta Biino, *TikTok Helped Colleen Hoover Sell 14.3 Million Copies of Her Books in 2022, New Data Shows. Here Are 3 Other Key Takeaways About BookTok's Impact on Sales*, BUS. INSIDER (Feb. 22, 2023, at 09:16 ET), https://www.businessinsider.com/tiktok-book-sales-2022-booktok-romance-colleen-hoover-2023-2 [https://perma.cc/ANA8-HJMC].

users see.[6] While TikTok has never fully disclosed how its algorithm works, we do know that it uses a machine learning model that considers factors such as a user's engagement and a video's popularity.[7] Because exposure is so vital to a book's success on BookTok, TikTok's algorithm can single-handedly determine which books will be successful and which will not.[8] This power has made the platform an essential marketing tool for authors and publishers, who now rely on partnerships with popular BookTok influencers to promote their titles.[9]

Now, with the launch of its own publishing imprint, 8th Note Press, TikTok is not only a trendsetter but also a direct stakeholder in the very products it promotes, blurring the lines between organic content discovery and targeted advertising.[10] The start of 8th Note Press introduces a conflict of interest; as both a platform and publisher, TikTok can use its algorithm to boost the books it publishes, presenting them as authentic user-endorsed recommendations without disclosing the financial motives behind these placements.[11]

Just over a year after ByteDance's announcement, the Federal Trade Commission (FTC) issued a final rule relating to specific unfair or deceptive acts or practices involving consumer reviews or testimonials.[12] The Trade Regulation Rule on the Use of Consumer Reviews and Testimonials became effective as of Octo-

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6 Sammi Burke, *Understanding TikTok's Algorithm: Here's How to Go Viral*, BACKSTAGE (Sep. 25, 2024), https://www.backstage.com/magazine/article/tik-tok-algorithm-explained-75091/ [https://perma.cc/6QT9-X3DC].

7 *See* Ben Smith, *How TikTok Reads Your Mind*, N.Y. TIMES (Dec. 5, 2021), https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html [https://perma.cc/L67D-UJKV].

8 Ava Barnaby, *The Impact of BookTok*, ROCK & ART: CULTURAL OUTREACH (July 26, 2023), https://www.rockandart.org/the-impact-of-booktok/ [https://perma.cc/EZX4-2LUC].

9 *See* Marta Biino, *'It's Huge, Beyond Anything in My Career': Publishing Industry Insiders Explain How TikTok Has Sent Book Sales Surging and How They're Trying to Tap into the BookTok Phenomenon*, BUS. INSIDER (Mar. 1, 2022, at 10:17 PT), https://www.businessinsider.com/how-authors-and-publishers-are-using-tiktok-to-sell-books-2022-2?r=US&IR=T [https://perma.cc/MPS2-PKMT].

10 *See* Alexandra Alter, *TikTok's Owner Already Publishes Digital Books. Now It Is Moving into Print.*, N.Y. TIMES (Oct. 16, 2024), https://www.nytimes.com/2024/10/16/books/tiktok-bytedance-8th-note-press-print.html [https://perma.cc/U3QE-RFSD].

11 *See id.*

12 Press Release, Fed. Trade Comm'n, Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials (Aug. 14, 2024), https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials [https://perma.cc/QRC4-STT7].

ber 21, 2024.[13] Notably, § 465.7(b) of this rule specifically addresses review suppression, saying:

> It is an unfair or deceptive act or practice and a violation . . . [f]or a business to materially misrepresent, expressly or by implication, that the consumer reviews of one or more of the products or services it sells displayed in a portion of its website or platform dedicated in whole or in part to receiving and displaying consumer reviews represent most or all the reviews submitted to the website or platform when reviews are being suppressed (*i.e.*, not displayable) based upon their ratings or their negative sentiment.[14]

This rule clearly prohibits traditional review suppression—when a business or platform manually removes, hides, or discourages negative reviews to create a misleadingly positive impression of a product or service, such as deleting reviews, refusing to publish certain ratings, intimidating consumers into retracting negative feedback, or using contractual clauses to prevent criticism.[15] However, this rule fails to address the subtle manipulation known as *algorithmic review suppression*. Algorithmic review suppression involves using complex algorithms to automatically downrank, shadow-ban, or deprioritize negative reviews, thereby creating an artificially positive impression of a product or service under the guise of content curation or engagement optimization.[16] Unlike traditional methods of suppression, such as manual deletion or explicit threats, algorithmic suppression is virtually invisible to consumers and regulators alike.

The current language of the rule does not address algorithmic suppression, creating a loophole where platforms can suppress negative reviews and promote positive ones under the guise of "content curation."[17] This loophole allows companies like ByteDance to artificially boost positive influencer content while downranking negative influencer content under the guise of content curation, leaving vulnerable consumers misled as to the actual quality of the products promoted on the platform. This con-

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13 *The Consumer Reviews and Testimonials Rule: Questions and Answers*, FED. TRADE COMM'N (Nov. 2024), https://www.ftc.gov/business-guidance/resources/consumer-reviews-testimonials-rule-questions-answers [https://perma.cc/9D2Z-CFFQ].

14 16 C.F.R. § 465.7(b) (2025).

15 *See* Ellie Guyon, *Is Review Suppression Hurting Your Business? What You Need to Know.*, WIDEWAIL (Dec. 17, 2024), https://www.widewail.com/blog/is-review-suppression-hurting-your-business-what-you-need-to-know [https://perma.cc/N5ZK-X847].

16 DANIELLE DRAPER & SABINE NESCHKE, BIPARTISAN POL'Y CTR., THE PROS AND CONS OF SOCIAL MEDIA ALGORITHMS 2 (2023), https://bipartisanpolicy.org/wp-content/uploads/2023/10/BPC_Tech-Algorithm-Tradeoffs_R01.pdf [https://perma.cc/3KTW-AV8B].

17 *See id.*

cern speaks to a larger and more systemic issue: platforms that curate user-generated reviews and recommendations, regardless of whether they sell the products in question, can quietly manipulate public perception through algorithmic ranking systems. To address the problem of algorithmic review suppression, this Note proposes three key solutions: (1) clear, expanded definitions of business and suppression that encompass algorithmic suppression for all review-hosting platforms, (2) a transparency requirement obligating platforms to disclose how their algorithms affect review visibility, and (3) a burden-shifting framework in legal disputes requiring platforms to demonstrate that their algorithms operate neutrally.

First, the FTC must update its regulations to expand its list of defined terms and explicitly define review suppression such that all forms of suppression are recognized as deceptive trade practices under § 465.7. The definition should encompass any algorithm or other automated system that alters the visibility or impact of negative reviews, whether by downranking, deprioritizing, or shadow-banning them. This change would ensure that businesses cannot hide behind claims of content curation when they manipulate review visibility. Further, § 465.7 only regulates "business[es]," which § 465.1(a) defines as individuals, partnerships, corporations, "or any other commercial entity that sells products or services."[18] This narrow language potentially excludes platforms like Amazon and Yelp in their hosting capacity, which still have significant influence on consumer purchasing decisions. To best serve the purposes of § 465.7, the FTC needs to expand the definition of business to include *all* review-hosting platforms, not just those with potential conflicts of interest.

Second, the FTC must impose transparency requirements on platforms that control consumer purchasing decisions. Platforms should be required to disclose their algorithms and ranking systems. This includes both *operational transparency*—where platforms must explain how their algorithms work—and *impact transparency*—where platforms must disclose the effects their algorithms have on review visibility and consumer behavior. In addition, the FTC should require review-hosting platforms to submit an annual algorithmic impact statement, akin to an environmental impact report. This statement would summarize findings from internal audits about how the platform's ranking system affects the visibility of different types of reviews. These

18 16 C.F.R. §§ 465.1(a), 465.7(b).

reports could be made accessible to consumers via a centralized public database, similar to what is proposed in the Algorithmic Accountability Act of 2023.[19]

Lastly, the FTC must establish a burden-shifting framework for legal disputes regarding review suppression. Currently, consumers bear an almost impossible burden when attempting to prove their negative reviews were suppressed intentionally, given their limited access to platform data and the opaque nature of algorithms. To address this imbalance, in cases where consumers suspect that their negative reviews have been suppressed, the burden of proof should be shifted to the platform. Platforms should be required to prove that their review-ranking algorithms are neutral and not designed to deceive consumers. This approach is similar to the burden-shifting principle used in other consumer protection laws like the Fair Credit Reporting Act, where agencies are required to prove the accuracy of disputed information.[20]

Part II of this Note provides essential background, exploring how algorithms function to influence consumer decision-making and outlining the evolution and scope of the FTC's current consumer review regulations, particularly the final rule codified by 16 C.F.R. § 465. Building upon this foundation, Part III analyzes the problem of algorithmic review suppression and the shortcomings of the current regulatory framework, illustrating how certain platforms exploit regulatory ambiguities. Part IV then sets forth targeted, actionable reforms designed to effectively close these identified regulatory loopholes. Recognizing, however, that these proposed reforms might encounter objections related to platform autonomy, commercial secrecy, and First Amendment protections, Part V explores alternative regulatory approaches that could balance consumer protection with legitimate platform interests. Finally, Part VI concludes with a concise summary of the identified problems and reaffirms the necessity and efficacy of the recommended solutions in strengthening consumer protections.

II. BACKGROUND

The FTC has long been tasked with policing unfair methods of competition through its statutory authority provided by 15 U.S.C. § 45.[21] Historically, this statute enabled the FTC to address overtly deceptive and unfair business practices, providing a

19 Algorithmic Accountability Act of 2023, S. 2892, 118th Cong. § 3(b) (2023).

20 15 U.S.C. § 1681i(a)(1)(A).

21 *Id.* § 45(a)(1) ("Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.").

foundational framework for consumer protection.[22] However, as consumer interactions increasingly moved online, new forms of deception emerged, prompting additional legislative responses.

Prior to the introduction of the new rule, 16 C.F.R. § 465, consumer review protections were primarily governed by the Consumer Review Fairness Act of 2016 (CRFA), codified under 15 U.S.C. § 45b.[23] The CRFA specifically targeted the suppression of consumer reviews through contractual restrictions.[24] Previously, businesses routinely leveraged standardized contracts—particularly online terms and conditions—to silence negative feedback.[25] Commonly referred to as "gag clauses," these terms threatened consumers with lawsuits or monetary penalties if they posted critical reviews, effectively stifling legitimate consumer complaints and creating an artificially positive public image of products or services.[26]

The enactment of the CRFA marked an important legislative achievement, explicitly outlawing such punitive contractual practices.[27] However, while the CRFA addressed direct suppression through contract clauses, it did not anticipate the more subtle and increasingly prevalent forms of review suppression enabled by technological advancements, such as algorithmic filtering and manipulation.

The limitations of the existing framework were highlighted by the FTC's case against Fashion Nova, a high-profile fast-fashion brand widely popularized through social media and celebrity endorsements.[28] Between 2015 and 2019, Fashion Nova systematically suppressed negative product reviews, leveraging automated tools designed to showcase positive feedback while ef-

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22 *See id.* § 45(a)(2) ("The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.").

23 *Id.* § 45b (prohibiting the use of form contracts that restrict consumers from or penalize them for providing truthful reviews and feedback about a company's goods or services).

24 *Id.*

25 *Consumer Review Fairness Act: What Businesses Need to Know*, FED. TRADE COMM'N (Feb. 2017), https://www.ftc.gov/business-guidance/resources/consumer-review-fairness-act-what-businesses-need-know [https://perma.cc/PK67-A6A9] ("Some companies put contract provisions in place, including in their online terms and conditions, that allowed them to sue or penalize consumers for posting negative reviews.").

26 Michael R. Gibson & Rossi F. Maddalena, *How Can They Say That? More Importantly, How Can I Erase That?*, HIGGS FLETCHER & MACK, LLP (Apr. 5, 2017), https://higgslaw.com/protecting-your-brand/ [https://perma.cc/DSE6-BVK4].

27 15 U.S.C. § 45b.

28 *See* Decision and Order, Fashion Nova, LLC, No. C-4759 (F.T.C. Mar. 18, 2022).

fectively burying negative ratings.[29] Specifically, the FTC alleged that Fashion Nova withheld hundreds of thousands of reviews rated lower than four stars from public view by using a third-party product review management system.[30] This system automatically published favorable four- and five-star reviews while queuing negative reviews indefinitely, thus misleading consumers into believing products were universally well-received.[31]

In drafting the updated regulation (16 C.F.R. § 465), public comments underscored the need for strengthened protections. One commenter, "SUPERGUEST," emphasized that "[t]he removal of reviews that are critical, but accurate of the service or good creates an illusion and ultimately defrauds the consumer of their choice."[32] Similarly, another commenter named "Hippensteel" expressed profound frustration, noting they were "[d]isgusted by businesses who filter or control their reviews."[33] Furthermore, a joint comment submitted by twenty-three state attorneys general articulated the risk of consumer deception, noting, "when a merchant only posts positive consumer reviews, consumers may mistakenly believe these reflect most or all feedback, significantly skewing their purchasing decisions."[34] These collective concerns illuminated a critical regulatory blind spot: the sophisticated, automated suppression methods emerging in digital marketplaces. Recognizing the need for clearer, modernized standards to protect consumers effectively, the FTC introduced the new regulation. However, as this Note contends, significant gaps remain, stressing the urgency of further regulatory reform to adequately address the complexities of algorithmic review suppression in the digital age.

While 16 C.F.R. § 465 addressed many of these concerns, it neglects to address the unique issues raised by algorithms specifically. Social media platforms utilize algorithms to keep users engaged as long and as frequently as possible, deriving profit

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29 *See* Complaint, Fashion Nova, LLC, No. C-4759 (F.T.C. Jan. 25, 2022).

30 *Id.*

31 *Id.*

32 Fed. Trade Comm'n, *Comment from SUPERGUEST: FTC-2023-0047-0001*, REGULATIONS.GOV (Sep. 8, 2023), https://www.regulations.gov/comment/FTC-2023-0047-0046 [https://perma.cc/K6GD-GVTT].

33 Fed. Trade Comm'n, *Comment from Hippensteel, Chris: FTC-2023-0047-0001*, REGULATIONS.GOV (Aug. 2, 2023), https://www.regulations.gov/comment/FTC-2023-0047-0006 [https://perma.cc/6729-B2R8].

34 D.C. OFF. OF THE ATT'Y GEN., OFF. OF THE ATT'Y GEN. STATE OF ILL. & OFF. OF ATT'Y GEN. COMMONWEALTH OF PA., REVIEWS AND TESTIMONIALS NPRM, R311003; TRADE REGULATIONS RULE ON THE USE OF CONSUMER REVIEWS AND TESTIMONIALS (2023).

from prolonged user activity on their platforms.[35] "Engaging," in this context, means interacting with content by viewing, liking, commenting, sharing, and saving posts.[36] To sustain user engagement, social media platforms aim to curate interesting and relatable feeds tailored to individual preferences.[37] Predicting user interests accurately becomes essential, driven by the vast amounts of data generated from user interactions, including clicks, views, shares, posts, and even subtle indicators of interest such as lingering on particular content before scrolling.[38] Although these enormous datasets are highly valuable, they are typically unstructured, meaning that the information is not organized into neat, easily analyzable categories.[39] Manual evaluation of such extensive and complex data would be prohibitively costly, slow, and ineffective for platforms. Consequently, platforms rely increasingly on sophisticated algorithms to parse through the immense volumes of data, discern patterns of user preferences, and curate feeds that keep users continually engaged.[40]

Algorithms that are designed to enhance user experience by showing personalized and relevant content may subtly, or explicitly, prioritize content favorable to the platform's commercial interests, potentially suppressing critical or negative user-generated content or reviews that could harm those interests.[41] Without regulatory oversight, these platforms operate with minimal transparency, leaving consumers unaware that the reviews or recommendations they see might be commercially influenced.

Although 16 C.F.R. § 465 is still relatively new, it has already begun to appear in litigation. In January 2025, California attorney, James R. Stout, filed a lawsuit against a TikTok user, alleging that she and others coordinated a wave of fake, retaliatory reviews on platforms like Yelp and Google.[42] Stout relied on § 465.2 of the FTC's new consumer review rule to argue that these reviews were not only false but also violated federal stand-

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35 Sang Ah Kim, *Social Media Algorithms: Why You See What You See*, 2 GEO. L. TECH. REV. 147, 147 (2017).

36 *Id.* at 147–48.

37 *Id.*

38 *See id.* at 148–49.

39 *Id.*

40 *Id.*

41 *See generally* Myojung Chung, *When Knowing More Means Doing Less: Algorithmic Knowledge and Digital (Dis)engagement Among Young Adults*, HARV. KENNEDY SCH. MISINFORMATION REV., Oct. 2025, at 1, 1 (highlighting how algorithms can suppress contrasting views and how low algorithmic literacy can exacerbate this issue).

42 *See* Stout Law Firm v. LaurenSays5, No. 8:25-cv-00126-FWS-ADS, 2025 WL 1421301, at *1 (C.D. Cal. Apr. 24, 2025).

ards for honest consumer feedback.[43] While the case centers on traditional fake reviews rather than algorithmic suppression, it demonstrates the need for revised definitions. Specifically, § 465.2, like § 465.7, applies only to "businesses" as narrowly defined by § 465.1(a), meaning entities that sell products or services. As a result, platforms like Yelp or Google, which merely host reviews but do not sell the reviewed products or services, fall outside the rule's scope, leaving consumers and business owners like Stout vulnerable to the harms that § 465 intends to mitigate. More broadly, the case shows how little precedent exists around how the rule should apply to more complex digital scenarios. Without further clarification or definitional guidance, courts may be hesitant to extend the rule's protections into newer, harder-to-detect forms of manipulation like algorithmic review suppression.

III. ANALYSIS

The practical consequences of algorithmic review suppression can be best understood by examining its impact across different platforms, particularly those that play a significant role in consumer decision-making and online marketplaces. Three of the most influential platforms—Amazon, Yelp, and TikTok—demonstrate both the complexity and pervasiveness of algorithm-driven content prioritization and suppression.

A. Amazon

As one of the world's largest online marketplaces, Amazon operates a complex and opaque algorithmic review system.[44] The Amazon Vine program is a prominent example of curated review content. Vine is an invitation-only system where select reviewers, identified as "Vine Voices," are provided with free products in exchange for their honest reviews.[45] Amazon claims these reviews are included among regular consumer reviews with a label "Vine Customer Review of Free Product" to distinguish them for transparency.[46] However, critics argue that Vine reviews have slight positive bias and are often prioritized or made more visible than

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43 *See* Devon Belcher, *Irvine Attorney Uses New FTC Regulations to Sue TikTok-er for Fake Reviews*, DAILY J.: CAL LAWYER (Jan. 27, 2025), https://www.dailyjournal.com/articles/383047-irvine-attorney-uses-new-ftc-regulations-to-sue-tiktok-er-for-fake-reviews [https://perma.cc/8DMR-85NV].

44 *See* Jason Snyder, *Inside Amazon's Retail Ad Service: The Price of Privacy*, FORBES (Jan. 16, 2025, at 22:08 ET), https://www.forbes.com/sites/jasonsnyder/2025/01/11/inside-amazons-retail-ad-service-the-price-of-privacy/ [https://perma.cc/7GLR-P2VM].

45 *All About Amazon Vine*, AMAZON, https://www.amazon.com/vine/about [https://perma.cc/4JZ4-S5UF] (last visited Mar. 9, 2026).

46 *Id.*

organic reviews, which may skew consumer perceptions of a product's true quality.[47]

This issue is compounded by Amazon's proprietary search and product-ranking algorithms, known as the A9 and A10 algorithms. These algorithms determine the placement and visibility of products within Amazon's search results, significantly influencing consumer purchasing decisions.[48] Although the exact workings of these algorithms are closely guarded trade secrets, product visibility is heavily influenced by consumer reviews, including star ratings, review frequency, recency, and consumer engagement.[49] However, the weighting of positive reviews versus critical ones is unknown, prompting speculation among sellers that the algorithm may subtly promote products with higher ratings or more favorable reviews. This is exacerbated by the lack of transparency and the absence of public standards for review display and prioritization. Some authors have expressed frustration with Amazon's "Top Reviews" filter, noting that older and more favorable reviews tend to dominate, while recent critical reviews are buried.[50] This opaque approach to review display can mislead consumers by providing an incomplete and potentially skewed impression of product quality.

Although Amazon's dual role as both a seller of its own private-label products and as a host platform for third-party sellers creates clear financial conflicts of interest, these practices also highlight a broader regulatory gap. Even when conflicts of interest are absent, consumers can still suffer harm if the visibility of authentic, critical reviews is artificially suppressed.

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47 *Amazon Vine: An Analysis of 30 Million Reviews Shows Vine Better than Incentivized*, REVIEWMETA (Nov. 21, 2016), https://reviewmeta.com/blog/amazon-vine-study/ [https://perma.cc/AAM7-ZWLV] (finding that "[o]n average, the regular reviews rated the products 4.24 stars, while the Vine reviews rated the same products 4.39 stars"); *see also* Sabrina Imbler, *Can You Trust Amazon Vine Reviews?*, N.Y. TIMES: WIRECUTTER (June 25, 2018), https://www.nytimes.com/wirecutter/blog/amazon-vine-reviews/ [https://perma.cc/4LLW-JFNW] (explaining that even a slight bump caused by positive bias in ratings can push a product "from a middling 50th percentile rating to the coveted 90th percentile").

48 *See* Tina Eaton, *The Amazon Algorithm Teardown: 12 Things We Know About Amazon Ranking*, PLYTIX (June 2019), https://www.plytix.com/blog/amazon-algorithm-teardown [https://perma.cc/L4FV-DE34].

49 *See id.*

50 *See* Comment, Thalstead (Mar. 17, 2022, at 11:51 PT), *on Amazon's "Top Reviews" Algorithm*, KBOARDS (Apr. 1, 2022), https://www.kboards.com/threads/amazon%E2%80%99s-%E2%80%9Ctop-reviews%E2%80%9D-algorithm.335942/ [https://perma.cc/T78E-NZQ6].

B. Yelp

Yelp uses a proprietary algorithm to classify reviews as either "recommended" or "non-recommended."[51] According to Yelp, this filtering system exists to spotlight reviews it deems most reliable, informative, and representative of a genuine customer experience, thus ostensibly aiding users in making more informed decisions.[52] However, the exact workings and criteria underpinning Yelp's recommendation algorithm remain closely guarded trade secrets, leading to persistent criticism regarding the system's opacity and perceived inconsistencies.[53] Many businesses have raised concerns that legitimate, though critical, reviews are inexplicably suppressed or demoted to the "non-recommended" section, significantly reducing their visibility to consumers.[54] Such businesses have argued further that their decision to advertise or not advertise with Yelp may influence the algorithm's treatment of reviews—a claim Yelp firmly denies but one that nonetheless demonstrates the lack of transparency and user confidence in its rating ecosystem.[55]

This lack of transparency creates meaningful consumer protection concerns, even though Yelp itself does not sell or directly promote reviewed products or services. Users rely heavily on Yelp's curated review content to guide their decisions, and if the reasoning behind which reviews are displayed remains hidden, consumers are denied critical information necessary for accurate evaluations. Yelp's algorithmic opacity thus limits users' ability

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51 Yao Yao et al., *Yelp's Review Filtering Algorithm*, 1 SMU DATA SCI. REV. 1, 1 (2018).

52 *See id.*; *Recommended Reviews*, YELP: SUPPORT CTR., https://www.yelp-support.com/Recommended_Reviews [https://perma.cc/7HAK-NTL8] (last visited Feb. 24, 2026).

53 *See* Yao et al., *supra* note 51, at 5; *see also* Judyann Sonido, *Why Yelp Is Hiding So Many Legitimate Online Reviews in Its 'Non-Recommended' Section*, THRIVE INTERNET MKTG. AGENCY (July 7, 2024), https://thriveagency.com/news/why-yelp-is-hiding-so-many-legitimate-online-reviews-in-its-non-recommended-section/ [https://perma.cc/ZC2F-M4S4] (explaining why good reviews are being hidden on Yelp and providing tips on how to unfilter those reviews).

54 *See, e.g.*, Christine Roher, *Here's Why You Should Click on 'Not Recommended' Reviews on Yelp*, NBC L.A. (May 10, 2019, at 5:03 PT), https://www.nbclosangeles.com/news/national-international/yelp-reviews-not-recommended-hurts-business/163109/ [https://perma.cc/QS93-SDVV].

55 In 2018, a Long Beach veterinary hospital filed a class-action lawsuit in the Central District of California, accusing Yelp of manipulating reviews and business ratings "through an extortion scheme that offers to remove a business' negative reviews or relocate them to the bottom of a listing page where fewer visitors will see them, if the business purchases a monthly advertising subscription." Kim Zetter, *Yelp Accused of Extortion*, WIRED (Feb. 24, 2018, at 19:07 PT), https://www.wired.com/2010/02/yelp-sued-for-alleged-extortion/ [https://perma.cc/9DYR-4HCW]. Yelp publicly responded to the accusation calling it "demonstrably false." *Id.*

to fully and fairly assess a business's true reputation. Moreover, because users cannot independently verify the neutrality or fairness of Yelp's algorithmic review curation, the platform's trustworthiness is diminished, undermining its credibility and value as an unbiased review aggregator.

Yelp's practices vividly illustrate why the FTC's current regulatory language restricting its application strictly to businesses that sell or directly promote reviewed products or services is insufficient. Platforms like Yelp, though not selling products directly, nevertheless exert substantial influence over market decisions through their control over which reviews consumers ultimately see. Algorithmic review suppression, even in the absence of direct financial conflicts of interest, produces real consumer harm by obscuring relevant and genuine critical feedback.

C. TikTok

TikTok, originally a platform dedicated primarily to short-form video content and social sharing, has rapidly evolved into a powerful commercial marketplace with users and influencers posting videos of them reviewing and promoting different products. This transformation has brought new concerns about potential review suppression and algorithmic manipulation.[56] TikTok's opaque algorithm, famous for its ability to curate hyper-personalized user feeds, could subtly or overtly prioritize favorable video reviews related to products in which ByteDance holds a financial stake, while simultaneously downranking critical or negative content.

However, concerns about algorithmic suppression on TikTok extend far beyond direct financial conflicts of interest. The lack of transparency surrounding TikTok's recommendation and content-ranking algorithm has drawn widespread scrutiny and criticism from users, creators, and researchers alike.[57] Academic studies have documented significant biases within TikTok's recommendation system, highlighting the algorithm's tendency to disproportionately suppress content from creators of color and marginalized communities.[58] This systemic bias, even if uninten-

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56 *See* Alter, *supra* note 10.

57 *See, e.g.*, Oliver Haug, *TikTok Is Spreading Anti-LGBTQ+ Content, According to New Report*, THEM (May 20, 2021), https://www.them.us/story/tiktok-spreading-anti-lgbtq-content-report [https://perma.cc/9HKX-B9DX]; *see also* Melany Amarikwa, *Social Media Platforms' Reckoning: The Harmful Impact of TikTok's Algorithm on People of Color*, 29 RICH. J.L. & TECH. 69, 70 (2023) (noting instances of both active and passive discrimination against people of color).

58 Amarikwa, *supra* note 57, at 126–30.

tional, reveals the broader harm caused by opaque and undisclosed algorithmic practices. By limiting visibility and audience reach for certain creators, TikTok's algorithm impacts not just consumer decisions, but also the equitable distribution of opportunities and exposure for creators and sellers. Whether the suppression is intentional or an unintended side effect of opaque ranking systems, the result is the same: consumers are misled, marginalized voices are excluded, and public trust in online reviews is eroded.

TikTok's practices thus highlight the critical shortcomings of the FTC's current regulatory approach, which restricts its application primarily to explicit misrepresentations of reviews for products or services sold by the business itself.[59] Given TikTok's influential role in shaping consumer preferences—even without directly selling products—its opaque algorithmic curation still creates significant consumer harm. Users rely on the visibility and perceived authenticity of content and reviews surfaced by TikTok's algorithm to guide their purchasing decisions. When critical voices are suppressed or disproportionately hidden from view, consumers receive a skewed perception of product quality, authenticity, and popularity, potentially leading them to uninformed or misled decisions.

IV. SOLUTIONS

A. Clear Definitions

The establishment of clear, precise definitions within FTC regulations has become increasingly essential, especially following recent judicial developments limiting regulatory agencies' interpretive authority. The landmark Supreme Court decision in *Loper Bright Enterprises v. Raimondo* notably restricted courts from deferring to agencies' interpretations of ambiguous statutory language, significantly impacting the longstanding *Chevron* deference established in *Chevron, U.S.A., Inc. v. NRDC, Inc.*[60] Under *Chevron*, courts historically granted substantial latitude to regulatory agencies like the FTC, deferring to their interpretation of ambiguous statutory provisions provided those interpretations were reasonable.[61] However, the *Loper Bright* ruling effec-

59 16 C.F.R. § 465.7(b) (2025).

60 *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 413 (2024) ("[C]ourts need not and . . . may not defer to an agency interpretation of the law simply because a statute is ambiguous."); Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865–66 (1984).

61 *Chevron*, 467 U.S. at 864–66.

tively ended this practice, stating explicitly that courts may no longer defer to an agency's statutory interpretation simply due to ambiguity in the language of the statute.[62]

This judicial shift heightens the need for explicit definitions within FTC regulations, particularly concerning terms such as "businesses" and "review suppression." Under the new judicial standard, the FTC cannot assume courts will defer to its interpretation of what constitutes "suppression" under § 465.7. It must explicitly define such terms in the rule itself to preserve enforceability. The FTC must amend its rule to explicitly define review suppression as a deceptive trade practice. This definition should include any algorithmic or automated system that downranks, deprioritizes, shadow-bans, or otherwise manipulates the visibility of consumer reviews in a way that materially misleads the public. It should also cover indirect suppression mechanisms, such as the use of engagement-based ranking systems that disproportionately promote positive content while quietly obscuring critical reviews. This language would ensure that businesses cannot shield themselves behind the pretense of neutral content curation when they are actively shaping consumer perception through selective review manipulation.

Equally important, the FTC must expand its definition of "business" under § 465.1(a). As currently written, the rule only applies to commercial entities that "sell products or services," which potentially excludes major platforms like Yelp and Amazon when they act as third-party hosts.[63] These platforms exert immense influence over consumer purchasing decisions through their control of review visibility, even when they are not selling the products themselves. To close this loophole, the FTC must broaden the scope of § 465.1(a) to include review-hosting platforms, not just product sellers. This definitional expansion is essential to bring platforms like Amazon (in its hosting capacity), Yelp, and TikTok under the rule's jurisdiction, reflecting the reality of today's digital marketplaces, where these platforms play a central role in shaping consumer perception and behavior.

Vague or ambiguous definitions create uncertainty and leave enforcement actions vulnerable to challenges in court, thereby weakening the FTC's regulatory effectiveness. The FTC must now ensure that all regulatory terms are defined with precision and

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62 *Loper Bright*, 603 U.S. at 412.

63 16 C.F.R. § 465.1(a) (currently defining a business as "an individual who sells products or services, a partnership that sells products or services, a corporation that sells products or services, or any other commercial entity that sells products or services").

clarity, minimizing room for interpretive ambiguity that could be leveraged by businesses to evade compliance or enforcement.

B. Transparency Requirement

Transparency in algorithmic practices is crucial to addressing algorithmic review suppression. The European Union's Digital Services Act (DSA) of 2022 provides a robust example of regulatory frameworks demanding transparency.[64] Under the DSA, platforms are required to disclose clear information regarding how their ranking algorithms function.[65] These transparency requirements include details on criteria used for ranking content such as Yelp, Amazon, or TikTok reviews, offering users insight into why certain content appears prominently in their feeds or search results and thereby empowering users to make more informed decisions.[66]

In contrast, the United States has taken only preliminary steps toward transparency, most notably through the introduction of the Algorithmic Accountability Act in 2023.[67] This proposed bill would require companies to conduct detailed impact assessments of their artificial intelligence and automated decision systems, evaluating factors like bias, fairness, privacy, and effectiveness.[68] The FTC would be tasked with creating regulations to guide these assessments and maintain a public database, giving consumers insight into how these technologies are used. If enacted, this framework could expose how algorithmic tools shape or suppress consumer feedback, increasing both accountability and fairness in the digital marketplace. However, since its proposal, the bill has stalled, further emphasizing the need to revitalize legislative momentum.[69]

However, meaningful transparency requires more than broad disclosures; it is grounded in a framework that distinguishes the different ways algorithms affect users. The frame-

64 Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC, 2022 O.J. (L 277) 1, 41 (EU).

65 *Id.* at 59.

66 Sebastian Kuclar Stiković, *The EU's Digital Services Act and Its Impact on Online Platforms* 38 (Stanford–Vienna Transatlantic Tech. L.F. Working Paper No. 85, 2024), https://law.stanford.edu/publications/no-85-the-eus-digital-services-act-and-its-impact-on-online-platforms/ [https://perma.cc/9Q7R-K37A].

67 Algorithmic Accountability Act of 2023, S. 2892, 118th Cong. (2023–24).

68 *Id.* at § 3(b).

69 *See S. 2892 – Algorithmic Accountability Act of 2023: All Actions S. 2892 – 118th Congress (2023–24)*, CONGRESS.GOV, https://www.congress.gov/bill/118th-congress/senate-bill/2892/all-actions [https://perma.cc/67D9-65CX] (last visited Mar. 12, 2026).

work breaks transparency down into three distinct categories: existence transparency, operational transparency, and impact transparency.[70] Existence transparency informs users about the presence of an algorithmic system influencing their experience.[71] Operational transparency details the mechanics behind algorithmic processes, clarifying criteria and decision-making methods.[72] Impact transparency, arguably the most important, illustrates how algorithms directly influence user decisions and interactions.[73] Research focusing on Yelp users, primarily conducted within the United States, has identified notable deficiencies in impact transparency, revealing that even when users know algorithms exist and somewhat understand their operations, they remain unaware of the profound ways these algorithms shape their decisions and perceptions.[74]

Moreover, increased transparency results in increased consumer trust and, therefore, more purchases. A study conducted by the European Commission demonstrates that clearly communicating ranking criteria significantly increases consumer trust and behavioral engagement.[75] Specifically, when informed that search rankings are based on criteria such as popularity, consumer engagement with products increased dramatically, irrespective of their position in search results.[76] Additionally, related research highlights that transparency about user reviews significantly boosts consumer confidence, with nearly 86% of users reporting increased trust when clearly informed about the nature of the reviews presented.[77]

Transparency also resonates deeply with American consumers. Recent surveys demonstrate a strong national preference for

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70 *See* Motahhare Eslami et al., *User Attitudes Towards Algorithmic Opacity and Transparency in Online Reviewing Platforms*, *in* PROCEEDINGS OF THE 2019 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS, Paper 494, at 1–2 (2019).

71 *See id.* at 3.

72 *See id.*

73 *See id.* at 5.

74 *See id.*

75 *See* Francisco Lupiáñez-Villanueva et al., Consumers, Health, Agric. & Food Exec. Agency, *Behavioural Study on The Transparency of Online Platforms: Executive Summary*, at 5 (2018), https://commission.europa.eu/system/files/2018-04/transparency_in_platforms_-_executive-summary_en.pdf [https://perma.cc/G9DM-L2PC].

76 *Id.* ("Compared to having no information on the criteria for ranking search results, when consumers are informed that the ranking is based on a specific criterion such as popularity, the probability of selecting the product is 115% higher, irrespective of its ranking position and visual prominence on the screen.").

77 *#BrandsGetReal: Social Media & the Evolution of Transparency*, SPROUT SOCIAL, https://sproutsocial.com/insights/data/social-media-transparency/ [https://perma.cc/W8FR-LC3G] (last visited Feb. 16, 2026).

transparent business practices, particularly in digital and social media environments. Approximately 86% of Americans believe that business transparency is more important than ever, significantly influencing consumer loyalty and brand trust.[78] When businesses exhibit transparent behavior, approximately 90% of consumers report higher loyalty, even after negative experiences.[79] Conversely, businesses that fail to meet transparency expectations risk significant consumer attrition, with 86% of consumers ready to take their business elsewhere when transparency standards fall short.[80]

C. Burden Shifting

Addressing algorithmic review suppression also requires a restructuring of the evidentiary burden in enforcement and dispute resolution. Specifically, the FTC should adopt a burden-shifting framework that places the responsibility on platforms—not consumers—to demonstrate the fairness and neutrality of their review-ranking algorithms. Given the complexity of digital platforms' ranking systems and proprietary nature of these algorithms, consumers face significant challenges in demonstrating unfair review suppression. Expecting consumers to detect—let alone prove—that their content was algorithmically suppressed is not only unrealistic; it creates a de facto shield for platforms to operate without accountability. Adopting a burden-shifting approach would hold platforms accountable, requiring them to demonstrate that their algorithms operate neutrally and without bias.

The principle of burden shifting is well-established within other areas of U.S. consumer protection law. The Fair Credit Reporting Act, for example, requires credit reporting agencies to verify the accuracy of disputed information upon consumer challenge, placing the evidentiary responsibility on businesses rather than consumers.[81] This statutory design reflects a recognition that consumers often lack access to the underlying data and internal processes of large institutions, enabling consumers to challenge inaccuracies without bearing an undue evidentiary burden. International precedents further validate the efficacy of burden shifting. For instance, Indonesia's consumer protection frame-

78 *See id.*

79 *See id.*

80 *See id.*

81 *See* 15 U.S.C. § 1681i(a)(1)(A) ("[I]f the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer . . . the agency shall . . . conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate.").

work employs reversed burden-of-proof principles in resolving consumer disputes, recognizing consumers' inherent disadvantage in proving wrongdoing by business actors.[82]

Applying similar burden-shifting frameworks to algorithmic suppression cases within the United States would enhance consumer protection. Platforms would bear the responsibility of proving their ranking algorithms are unbiased, objective, and transparent. This shift deters platforms from engaging in unfair manipulations by making them directly accountable for their algorithmic practices.

Moreover, this evidentiary structure would simplify enforcement efforts by the FTC. Instead of requiring regulators to prove that a given algorithm suppressed reviews with deceptive intent, a task complicated by algorithmic opacity and limited access to internal code, the agency could instead request affirmative documentation or explanation from the platform. If a platform cannot demonstrate that its systems operate in a manner that is neutral, consistent, and minimally harmful to consumers, then it would be presumed to be in violation of § 5 of the FTC Act or a revised § 465.7.[83] This not only enhances the enforceability of the rule but also creates a compliance culture in which platforms must proactively maintain transparency standards rather than defensively react to allegations of misconduct.

V. COUNTER ARGUMENTS & ALTERNATIVES

While transparency is often seen as essential for building consumer trust and enabling effective regulatory oversight, it could also lead to unintended consequences. Scholars have identified three primary reasons for caution in enforcing transparency: (1) corporate secrecy aimed at preventing malicious actors from gaming the system, (2) the limited technical literacy of general users, and (3) the inherent difficulty in understanding complex algorithms—even for the developers who design them.[84]

Revealing too much about how algorithms operate can provide malicious users with tools to manipulate or exploit these

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82 *See* Misnar Syam, Yussy Adelina Mannas & Rembrandt, *Application of the Shifting Burden of Proof Principle in Settlement of Consumer Disputes at the District Court in West Sumatra*, 10 INT'L J. OF INNOVATION, CREATIVITY & CHANGE 228, 228 (2019).

83 *See* 15 U.S.C. § 45(a)(1) ("Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.").

84 *See* Jenna Burrell, *How the Machine 'Thinks': Understanding Opacity in Machine Learning Algorithms*, 3 BIG DATA & SOC'Y, June 2016, at 1, 1–2.

systems.[85] For instance, Yelp maintains that its proprietary review recommendation algorithm is intentionally opaque to deter bad actors from exploiting it.[86] It emphasizes that transparency in certain elements of algorithmic decision-making would compromise the system's effectiveness.[87] Further, this opacity exists "to maintain competitive advantage and/or to keep a few steps ahead of adversaries."[88] This rationale extends to burden-shifting concerns; platforms might resist burden-shifting requirements that would compel them to reveal their review sorting methodologies, citing the risk of revealing trade secrets or enabling review manipulation.

Similarly, operational transparency—knowing how an algorithm works—can be less helpful than intended if it fails to convey meaningful or actionable insights to non-expert users. In such cases, "transparency" may become a barrier rather than a bridge to understanding.[89] Too much transparency can overwhelm users, particularly when the information provided is technical or abstract. Users presented with overly technical algorithmic explanations can become confused or frustrated, ultimately eroding trust instead of enhancing it.[90]

Moreover, the complexity of algorithmic processes makes it difficult to provide transparency that is both accurate and comprehensible. Algorithms often evolve through machine learning, adapting in ways that even their designers cannot fully predict or explain.[91] This black-box nature of algorithmic decision-making

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85 *See id.* at 3.

86 Zach Anderson, *Getting Customer Reviews Through Yelp Filters*, LINKEDIN (Sep. 1, 2016), https://www.linkedin.com/pulse/getting-customer-reviews-through-yelp-filters-zach-anderson/ [https://perma.cc/4L4Y-KYB2] ("*We're purposely not elaborate about all the variables that go into defining an 'established' user because it's a Catch-22: The more descriptive we are about what makes an established user, the less effective our software is at fighting shills and malicious content.*" (citation omitted)).

87 *Id.*

88 Burrell, *supra* note 84, at 3.

89 Motahhare Eslami et al., *Communicating Algorithmic Process in Online Behavioral Advertising*, *in* PROCEEDINGS OF THE 2018 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS, Paper 432, at 1, 2 (2018).

90 René F. Kizilcec, *How Much Information? Effects of Transparency on Trust in an Algorithmic Interface*, *in* PROCEEDINGS OF THE 2016 CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS, at 2390, 2390 (2016) ("The consequences of increased algorithm awareness through more transparent interface design are not well understood, especially in real world situations where the stakes are high. Transparency may . . . erode users' trust in a system by changing beliefs about its trustworthiness.").

91 Erica Stanford, *Autonomous AI: Who Is Responsible When AI Acts Autonomously and Things Go Wrong?*, GLOBAL LEGAL INSIGHTS (May 15, 2025), https://www.globallegalinsights.com/practice-areas/ai-machine-learning-and-big-data-

complicates efforts to provide detailed transparency without sacrificing simplicity and user comprehension. As such, calls for transparency must balance the benefits of disclosure with the risks of confusion, misuse, and intellectual property concerns.

Another significant counterargument concerns platform autonomy and the potential for mandated transparency or regulation to infringe upon First Amendment rights. In recent legal battles, platforms have successfully argued that their content curation practices are protected forms of editorial judgment under the First Amendment.

In 2024, the Supreme Court held that algorithms used by social media platforms constitute protected speech activity.[92] In *Moody v. NetChoice*, Florida and Texas enacted laws requiring platforms to explain and justify decisions about controlling third-party content.[93] Social media platforms challenged the law as a violation of their First Amendment protections.[94] The Court held that such requirements infringed on platforms' editorial freedom, suggesting that government mandates about algorithmic transparency could be similarly problematic under constitutional scrutiny.[95] This precedent raises concerns for regulators, like the FTC, when creating rules that might compel platforms to disclose or defend their algorithms. If algorithms are viewed as forms of expression or editorial discretion, regulations like 16 C.F.R. § 465 could face constitutional challenges.

Courts' treatment of algorithmic liability under other laws may also inform future interpretations of FTC regulations. For example, § 230 of the Communications Decency Act historically provided broad immunity to platforms for content posted by third-party users.[96] However, recent case law signals a shift away from blanket protections for algorithmic curation. In *Gonzalez v. Google LLC*, the Supreme Court declined to decide whether Google's algorithmic recommendations were protected under § 230, leaving the question open for future litigation.[97] This ambiguity was addressed more directly in *Anderson v. TikTok, Inc.*[98] In *Anderson*, a mother of a 10-year-old who died after participat-

laws-and-regulations/autonomous-ai-who-is-responsible-when-ai-acts-autonomously-and-things-go-wrong/ [https://perma.cc/BNJ5-HZQ5].

92 Moody v. NetChoice, LLC, 603 U.S. 707, 716, 734 (2024).

93 *Id.* at 717.

94 *Id.*

95 *Id.* at 739–40.

96 47 U.S.C. § 230(c)(1).

97 598 U.S. 617, 622 (2023).

98 116 F.4th 180, 183 (3d Cir. 2024).

ing in a dangerous challenge on TikTok sued TikTok, alleging its algorithm promoted the video that led to her daughter's death.[99] The Third Circuit held that TikTok's algorithm was not shielded by § 230 and allowed the plaintiff's claims to proceed.[100] The court emphasized that algorithms reflect editorial choices made by platforms, citing *Moody* to support the notion that algorithmic decisions are forms of corporate speech.[101]

These rulings reflect a shifting legal landscape. On one hand, platforms claim First Amendment protections to shield algorithmic practices from regulation. On the other, courts are beginning to recognize the societal harms of unchecked algorithmic influence and are narrowing the scope of immunity traditionally afforded under § 230.

VI. CONCLUSION

Platforms are increasingly using algorithms to shape how reviews appear, creating a modern form of review suppression that is difficult to detect and even harder to regulate. This kind of algorithmic suppression raises serious concerns about transparency, accountability, and fairness in the digital marketplace, especially when driven by financial incentives.

The FTC's 2024 final rule, 16 C.F.R. § 465, is a meaningful step forward in addressing traditional review suppression practices. It rightly prohibits businesses from misrepresenting consumer feedback by hiding or removing negative reviews. But the rule does not go far enough. It does not account for algorithmic practices that can subtly bury critical feedback under the guise of curation, ranking, or engagement optimization. Nor does it clearly apply to platforms like Yelp, Amazon (when hosting third-party sellers), or TikTok, where the lines between hosting, curating, and selling blur.

This Note calls for the FTC to expand and clarify the rule in three ways. First, the rule needs an explicit definition of review suppression that includes algorithmic review suppression practices like downranking, shadow-banning, or deprioritizing reviews based on sentiment. Second, platforms should be subject to reasonable transparency requirements, including disclosures about how their review-ranking systems work and affect what users see. Third, the burden of proof in disputes should not fall

99 *Id.* at 181.
100 *Id.* at 184.
101 *Id.*

on the consumer, who has limited access to internal systems and data. Instead, platforms should be responsible for demonstrating that their algorithms operate in a fair and neutral manner.

These proposed solutions draw on existing models. Transparency frameworks in the EU's Digital Services Act and the proposed U.S. Algorithmic Accountability Act show that algorithmic oversight is both possible and necessary. Similarly, the burden-shifting framework used in the Fair Credit Reporting Act recognizes that consumers should not be expected to navigate opaque systems alone. These models provide strong foundations for building a regulatory structure that fits the reality of today's digital platforms. While concerns around trade secrets, complexity, and First Amendment protections are real, they do not outweigh the need for baseline transparency and accountability, especially when platforms are shaping public perception and influencing consumer behavior.

Ultimately, regulating algorithmic review suppression is not just about closing a loophole; it is about ensuring consumers can trust the information they rely on every day. As algorithms play an increasingly central role in shaping what we see, the FTC has a responsibility to ensure that those systems are not used to mislead the public. Clear definitions, transparency requirements, and a fair burden-shifting structure are critical next steps to make that possible.