

116TH CONGRESS
1ST SESSION

S. 1578

To protect the privacy of internet users through the establishment of a national Do Not Track system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2019

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the privacy of internet users through the establishment of a national Do Not Track system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Do Not Track Act”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) COMMISSION.—The term “Commission”
8 means the Federal Trade Commission.

1 (2) CONNECTED DEVICE.—The term “con-
2 nected device” means a device that is capable of con-
3 necting to the internet, directly or indirectly.

4 (3) COVERED WEBSITE, SERVICE, OR APPLICA-
5 TION.—The term “covered website, service, or appli-
6 cation” means a website on the internet, an online
7 service, an online application, or a mobile application
8 that—

9 (A) is operated or provided for commercial
10 purposes, in interstate or foreign commerce;
11 and

12 (B) is not operated by a nonprofit entity
13 that would otherwise be exempt from coverage
14 under section 5 of the Federal Trade Commis-
15 sion Act (15 U.S.C. 45).

16 (4) DNT SIGNAL.—The term “DNT signal”
17 means a signal sent by a connected device, such as
18 the hypertext transfer protocol developed by the
19 World Wide Web Consortium Working Group on
20 Tracking Preference Expression, that is designated
21 by the Commission for purposes of the Do Not
22 Track program required under section 3(b).

23 (5) FIRST-PARTY OPERATOR.—The term “first-
24 party operator” means an operator of a website on
25 the internet, an online service, an online application,

1 or a mobile application with which a user intends to
 2 connect, but does not include an operator of an ad-
 3 vertisement that appears on such a website, service,
 4 or application or a program used to log in to such
 5 a website, service, or application (if the operator of
 6 such advertisement or program is different from the
 7 operator of the website, service, or application).

8 (6) TARGETED ADVERTISING.—

9 (A) IN GENERAL.—The term “targeted ad-
 10 vertising” means a form of advertising where
 11 advertisements are displayed to a user based on
 12 the user’s traits, information from a profile
 13 about the user that is created for the purpose
 14 of selling advertisements, or the user’s previous
 15 online or offline behavior.

16 (B) LIMITATION.—Such term shall not in-
 17 clude contextual advertising, including—

18 (i) advertising that is directed to a
 19 user based on the content of the website,
 20 online service, online application, or mobile
 21 application that the user is connected to;
 22 or

23 (ii) advertising that is directed to a
 24 user by the operator of a website, online
 25 service, online application, or mobile appli-

1 cation based on the search terms that the
 2 user used to arrive at such website, service,
 3 or application.

4 (7) THIRD-PARTY OPERATOR.—The term
 5 “third-party operator” means any operator of a pro-
 6 gram that appears on a website, service, or applica-
 7 tion with respect to which the operator is not a first-
 8 party operator.

9 **SEC. 3. ESTABLISHMENT OF DO NOT TRACK SYSTEM.**

10 (a) IN GENERAL.—Not later than 6 months after the
 11 date of enactment of this Act, the Commission shall imple-
 12 ment and enforce a Do Not Track system, including the
 13 program described in subsection (b), to protect consumers
 14 from unwanted online data harvesting and targeted adver-
 15 tising.

16 (b) DO NOT TRACK PROGRAM.—As part of the Do
 17 Not Track system required under this section, the Com-
 18 mission shall designate the DNT signal and make avail-
 19 able on the public website of the Commission a simple pro-
 20 gram that—

21 (1) can be downloaded to any common con-
 22 nected device;

23 (2) sends the DNT signal to every website, on-
 24 line service, or online application to which the device

1 connects each time the device connects to such
2 website, service, or application; and

3 (3) permits the user of the connected device to
4 designate websites, services, or applications to which
5 such signal should not be sent, but does not exempt
6 any website, service, or application from receiving
7 such signal if it is not so designated.

8 (c) OTHER DO NOT TRACK SYSTEMS.—Nothing in
9 this Act shall be construed as prohibiting the operator of
10 any web browser or similar interface or a device designer
11 or manufacturer from offering a program that sends the
12 DNT signal to websites, services, or applications, provided
13 that such program permits users to designate websites,
14 services, or applications to which such signal should not
15 be sent.

16 (d) RULEMAKING AUTHORITY.—The Commission
17 may promulgate regulations, in accordance with section
18 553 of title 5, United States Code, to carry out this sec-
19 tion.

20 **SEC. 4. REQUIREMENTS FOR OPERATORS; PROHIBITED**
21 **ACTS.**

22 (a) REQUIREMENTS.—

23 (1) SEARCH FOR DNT SIGNAL.—The operator
24 of any covered website, service, or application (or
25 any program that appears in such a website, applica-

tion, or service) shall ensure that the website, service, or application (or program) searches for the DNT signal whenever a connected device connects to the website, service, or application.

(2) MANDATORY DISCLOSURE.—

(A) IN GENERAL.—Subject to subparagraph (B), if the operator of a covered website, service, or application collects more data from a user of such website, service, or application than is necessary to operate such website, service, or application the operator shall, through a pop-up notification, provide any user whose connected device is not sending the DNT signal with—

(i) notice of the website, service, or application’s policy of collecting data beyond what is necessary to operate the website, service, or application;

(ii) notice of the protections from data collection and targeted advertising available to users under this Act;

(iii) notice that the user may, through the public website of the Federal Trade Commission, download the Do Not Track

1 program described in section 3(b), and a
2 link to such website; and

3 (iv) notice that the user may be able
4 to activate the DNT signal through the
5 user's device or browser.

6 (B) NUMBER AND TIMING OF DISCLO-
7 SURES.—The operator of a covered website,
8 service, or application shall make the disclo-
9 sures required under subparagraph (A)—

10 (i) the first time a connected device
11 connects to such website, service, or appli-
12 cation; and

13 (ii) unless the user of the connected
14 device opts out of receiving such disclo-
15 sures, at least every 30th time a connected
16 device connects to such website, service, or
17 application.

18 (C) COLLECTION OF DATA FOR TARGETED
19 ADVERTISING.—For purposes of this sub-
20 section, a covered website, service, or applica-
21 tion that collects data for the purpose of de-
22 signing or displaying targeted advertisements
23 shall be considered to be collecting more data
24 than is necessary to operate such website, serv-
25 ice, or application.

1 (b) PROHIBITION ON DATA COLLECTION AND TAR-
 2 GETED ADVERTISING.—

3 (1) IN GENERAL.—Subject to paragraph (3), it
 4 shall be unlawful for a first-party operator of a cov-
 5 ered website, service, or application that receives the
 6 DNT signal from the connected device of a user
 7 to—

8 (A) collect data (other than such data as
 9 is necessary for the operation of the website,
 10 service, or application) from the user;

11 (B) use any data collected from the user
 12 for a secondary purpose, including for the pur-
 13 pose of targeted advertising; or

14 (C) share any data collected from the user
 15 with a third party unless the user expressly
 16 consents to the sharing of data in a manner
 17 that demonstrates the user's intent for the
 18 first-party operator to be an intermediary be-
 19 tween the user and the third party.

20 (2) PROHIBITION ON COLLECTION OF DATA BY
 21 OTHER OPERATORS.—

22 (A) IN GENERAL.—It shall be unlawful for
 23 a third-party operator of a program (including
 24 a program that is an advertisement or a portal
 25 used to log in to a website, service, or applica-

tion) that receives the DNT signal from the connected device of a user of a covered website, service, or application to collect any data from such user, other than, subject to subparagraph (B), data collected for the purpose of analyzing how or whether the user engaged with such program.

(B) LIMITATIONS ON COLLECTION OF DATA FOR ENGAGEMENT ANALYTICS.—Data collected for the purpose of analyzing user engagement with a program described in subparagraph (A)—

(i) shall be collected only in a de-identified manner; and

(ii) may not be used to create or contribute to a profile of the user from which it is collected.

(3) EXCEPTIONS.—

(A) LAW ENFORCEMENT.—The prohibitions on data collection described in paragraph (1) shall not apply where data is collected for the purpose of assisting a law enforcement agency.

(B) COMPLEMENTARY SERVICES.—Notwithstanding paragraph (1), a first-party oper-

1 ator of a covered website, service, or application
2 may collect additional data from a user beyond
3 what is necessary for the operation of such
4 website, service, or application if such addi-
5 tional data is necessary for the operation of a
6 different covered website, service, or application
7 that is—

8 (i) both owned and operated by such
9 first-party operator;

10 (ii) designed to complement the cov-
11 ered website, service, or application
12 accessed by the user; and

13 (iii) branded as a complementary
14 website, service, or application to the cov-
15 ered website, service, or application
16 accessed by the user.

17 (c) INTERFERING WITH DNT SIGNAL.—It shall be
18 unlawful for any person to—

19 (1) block or impede the ability of a covered
20 website, service, or application to receive the DNT
21 signal; or

22 (2) block or impede the ability of a connected
23 device to send the DNT signal.

1 (d) DISCRIMINATION BASED ON DNT PREF-
2 ERENCES.—It shall be unlawful for a first-party operator
3 of a covered website, service, or application to—

4 (1) deny a user access to, or service from, such
5 website, service, or application on the basis that the
6 website, service, or application received the DNT
7 signal from the user; or

8 (2) provide a user from whom such website,
9 service, or application received the DNT signal with
10 a different level of access or service than the level
11 of access or service provided to a user from whom
12 the website, service, or application does not receive
13 the DNT signal.

14 (e) EFFECTIVE DATE.—This section shall take effect
15 on the date that is 6 months after the date of enactment
16 of this Act.

17 **SEC. 5. ENFORCEMENT AND APPLICABILITY.**

18 (a) ENFORCEMENT BY THE COMMISSION.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided, this Act and the regulations prescribed under
21 this Act shall be enforced by the Commission under
22 the Federal Trade Commission Act (15 U.S.C. 41 et
23 seq.).

24 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
25 TICES.—A violation of this Act or a regulation pre-

1 scribed under this Act shall be treated as a violation
2 of a rule defining an unfair or deceptive act or prac-
3 tice prescribed under section 18(a)(1)(B) of the Fed-
4 eral Trade Commission Act (15 U.S.C.
5 57a(a)(1)(B)).

6 (3) ACTIONS BY THE COMMISSION.—

7 (A) IN GENERAL.—Except as provided in
8 subsection (b)(1), the Commission shall prevent
9 any person from violating this Act or a regula-
10 tion prescribed under this Act in the same man-
11 ner, by the same means, and with the same ju-
12 risdiction, powers, and duties as though all ap-
13 plicable terms and provisions of the Federal
14 Trade Commission Act (15 U.S.C. 41 et seq.)
15 were incorporated into and made a part of this
16 Act, and, except as provided in subparagraph
17 (B), any person who violates this Act or a regu-
18 lation prescribed under this Act shall be subject
19 to the penalties and entitled to the privileges
20 and immunities provided in the Federal Trade
21 Commission Act.

22 (B) PENALTIES.—

23 (i) IN GENERAL.—Notwithstanding
24 section 5(m) of the Federal Trade Com-
25 mission Act (15 U.S.C. 45(m)), a civil pen-

1 alty recovered for a violation of this Act or
 2 a regulation prescribed under this Act may
 3 be in excess of the amounts provided for in
 4 that section, provided that such penalty
 5 meets the requirements of this subpara-
 6 graph.

7 (ii) PENALTY FOR NEGLIGENT VIOLA-
 8 TION.—In the case of a person that neg-
 9 ligently violates this Act or a regulation
 10 prescribed under this Act, such person
 11 shall be liable for a civil penalty that shall
 12 not exceed \$50 for every user affected by
 13 such violation for every day during which
 14 the person is in violation of this Act under
 15 this clause.

16 (iii) PENALTY FOR WILLFUL OR
 17 RECKLESS VIOLATION.—In the case of a
 18 person that willfully or recklessly violates
 19 this Act or a regulation prescribed under
 20 this Act, such person shall be liable for a
 21 civil penalty that—

22 (I) shall not be less than
 23 \$100,000; and

24 (II) shall not exceed \$1,000 for
 25 every user affected by such violation

1 for every day during which the person
2 is in violation of this Act under this
3 clause.

4 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
5 ERAL.—

6 (1) IN GENERAL.—

7 (A) CIVIL ACTIONS.—In any case in which
8 the attorney general of a State has reason to
9 believe that an interest of the residents of that
10 State has been or is threatened or adversely af-
11 fected by the engagement of any person in a
12 practice that violates this Act or a regulation
13 prescribed under this Act, the State, as *parens*
14 *patriae*, may bring a civil action on behalf of
15 the residents of the State in a district court of
16 the United States or a State court of appro-
17 priate jurisdiction to—

18 (i) enjoin that practice;

19 (ii) enforce compliance with this Act
20 or such regulation;

21 (iii) obtain damages, statutory dam-
22 age, restitution, or other compensation on
23 behalf of residents of the State; or

24 (iv) obtain such other relief as the
25 court may consider to be appropriate.

1 (B) NOTICE.—

2 (i) IN GENERAL.—Before filing an ac-
3 tion under subparagraph (A), the attorney
4 general of the State involved shall provide
5 to the Commission—

6 (I) written notice of that action;

7 and

8 (II) a copy of the complaint for
9 that action.

10 (ii) EXEMPTION.—

11 (I) IN GENERAL.—Clause (i)
12 shall not apply with respect to the fil-
13 ing of an action by an attorney gen-
14 eral of a State under this paragraph
15 if the attorney general of the State
16 determines that it is not feasible to
17 provide the notice described in that
18 clause before the filing of the action.

19 (II) NOTIFICATION.—In an ac-
20 tion described in subclause (I), the at-
21 torney general of a State shall provide
22 notice and a copy of the complaint to
23 the Commission at the same time as
24 the attorney general files the action.

25 (2) INTERVENTION.—

1 (A) IN GENERAL.—On receiving notice
 2 under paragraph (1)(B), the Commission shall
 3 have the right to intervene in the action that is
 4 the subject of the notice.

5 (B) EFFECT OF INTERVENTION.—If the
 6 Commission intervenes in an action under para-
 7 graph (1), it shall have the right—

8 (i) to be heard with respect to any
 9 matter that arises in that action; and

10 (ii) to file a petition for appeal.

11 (3) CONSTRUCTION.—For purposes of bringing
 12 any civil action under paragraph (1), nothing in this
 13 Act shall be construed to prevent an attorney gen-
 14 eral of a State from exercising the powers conferred
 15 on the attorney general by the laws of that State
 16 to—

17 (A) conduct investigations;

18 (B) administer oaths or affirmations; or

19 (C) compel the attendance of witnesses or
 20 the production of documentary and other evi-
 21 dence.

22 (4) ACTIONS BY THE COMMISSION.—In any
 23 case in which an action is instituted by or on behalf
 24 of the Commission for violation of this Act or a reg-
 25 ulation prescribed under this Act, no State may,

1 during the pendency of that action, institute an ac-
2 tion under paragraph (1) against any defendant
3 named in the complaint in the action instituted by
4 or on behalf of the Commission for that violation.

5 (5) VENUE; SERVICE OF PROCESS.—

6 (A) VENUE.—Any action brought under
7 paragraph (1) may be brought in—

8 (i) the district court of the United
9 States that meets applicable requirements
10 relating to venue under section 1391 of
11 title 28, United States Code; or

12 (ii) a State court of competent juris-
13 diction.

14 (B) SERVICE OF PROCESS.—In an action
15 brought under paragraph (1) in a district court
16 of the United States, process may be served
17 wherever defendant—

18 (i) is an inhabitant; or

19 (ii) may be found.

20 **SEC. 6. SEVERABILITY.**

21 If any provision of this Act or the application of a
22 provision of this Act to any person or circumstance is held
23 to be invalid or unconstitutional, the remainder of this

- 1 Act, or the application of such provision to any other per-
- 2 son or circumstance, shall not be affected.

