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To require software marketplace operators and owners of covered foreign software to provide consumers with a warning prior to the download of such software, to establish consumer data protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 19), 2020

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

A BILL

To require software marketplace operators and owners of covered foreign software to provide consumers with a warning prior to the download of such software, to establish consumer data protections, 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 “Adversarial Platform
5 Prevention Act of 2020” or the “APP Act”.

1 **SEC. 2. CONSUMER PROTECTIONS REGARDING COVERED**
2 **FOREIGN SOFTWARE.**

3 (a) CONSUMER WARNING AND ACKNOWLEDGMENT
4 FOR DOWNLOAD OF COVERED FOREIGN SOFTWARE.—

5 (1) IN GENERAL.—A software marketplace op-
6 erator or an owner of covered foreign software may
7 not:

8 (A) Permit a consumer to download cov-
9 ered foreign software unless, before the
10 download begins—

11 (i) a warning that meets the require-
12 ments of paragraph (2) is displayed to the
13 consumer, separately from any privacy pol-
14 icy, terms of service, or other notice; and

15 (ii) the consumer is required to choose
16 (by taking an affirmative step such as
17 clicking on a button) between the options
18 of—

19 (I) acknowledging such warning
20 and proceeding with the download; or

21 (II) cancelling the download.

22 (B) Make available covered foreign soft-
23 ware for download by consumers unless the op-
24 erator or owner has in place procedures to en-
25 sure compliance with subparagraph (A).

1 (2) REQUIREMENTS FOR WARNING.—The re-
2 quirements of this paragraph are, with respect to a
3 warning regarding covered foreign software—

4 (A) that the warning include—

5 (i) the name of the covered foreign
6 software;

7 (ii) the name of each owner of the
8 covered foreign software, and, if applicable
9 with respect to each such owner, the name
10 of the covered country—

11 (I) under the laws of which such
12 owner is organized;

13 (II) in which such owner con-
14 ducts its principal operations; or

15 (III) in which such owner is
16 headquartered;

17 (iii) the name of each controlling enti-
18 ty of the owner of the covered foreign soft-
19 ware, and if applicable with respect to each
20 such controlling entity, the name of the
21 covered country—

22 (I) under the laws of which such
23 entity is organized;

24 (II) in which such entity con-
25 ducts its principal operations; or

1 (III) in which such entity is
2 headquartered;

3 (iv) any enumerated risk to data pri-
4 vacy and security or the censorship of
5 speech associated with the laws and prac-
6 tices of a covered country disclosed under
7 this subparagraph;

8 (v) whether the owner of a covered
9 foreign software, or any controlling entity
10 of such owner, has ever provided the data
11 of United States consumers, as it relates to
12 such software, to any law enforcement
13 agency, intelligence agency, or other gov-
14 ernment entity of a covered country; and

15 (vi) a description of how to acknowl-
16 edge the warning and either proceed with
17 or cancel the download;

18 (B) that the warning be updated annually;

19 and

20 (C) such other requirements as the Com-
21 mission, in consultation with the Attorney Gen-
22 eral of the United States, shall determine.

23 (3) LIABILITY OF SOFTWARE OWNER.—If a
24 software marketplace operator permits a consumer
25 to download covered foreign software or makes cov-

1 ered foreign software available for download in viola-
2 tion of paragraph (1), the operator shall not be lia-
3 ble for a violation of such paragraph if the operator
4 reasonably relied on inaccurate information from the
5 owner of the covered foreign software in determining
6 that the software was not covered foreign software,
7 and the owner of the covered foreign software shall
8 be considered to have committed the violation of
9 such paragraph.

10 (b) CONSUMER DATA PROTECTIONS.—

11 (1) CONSUMER DATA PRIVACY PRACTICES.—

12 (A) CONSUMER DATA REPORT.—Not later
13 than 30 days after the date of enactment of
14 this Act (or in the case of covered foreign soft-
15 ware that is created after such date or software
16 that becomes covered foreign software after
17 such date, 60 days after the date that such
18 software is created or becomes covered foreign
19 software), and annually thereafter, an owner of
20 covered foreign software shall submit to the
21 Commission and the Attorney General of the
22 United States a report that includes a complete
23 description of any consumer data privacy prac-
24 tice of the owner as it relates to the data of
25 United States consumers, including—

1 (i) the type of data of United States
2 consumers being accessed;

3 (ii) a description of how such data is
4 used by the owner;

5 (iii) a description of any consumer
6 data protection measure in place that pro-
7 tects the rights and interests of United
8 States consumers;

9 (iv) information regarding—

10 (I) the number of requests from
11 a law enforcement agency, intelligence
12 agency, or other government entity of
13 a covered country to disclose the con-
14 sumer data of a person in the United
15 States; and

16 (II) a description of how such re-
17 quests were handled; and

18 (v) a description of any internal con-
19 tent moderation practice of the owner as it
20 relates to the data of consumers in the
21 United States, including any such practice
22 that also relates to consumers in another
23 country.

24 (B) PUBLIC ACCESSIBILITY.—Notwith-
25 standing any other provision of law, not later

1 than 60 days after the receipt of a report under
2 subparagraph (A), the Attorney General of the
3 United States shall publish the information con-
4 tained in such report (except for any confiden-
5 tial material) in a publicly accessible manner.

6 (2) CONSUMER DATA DISCLOSURE PRAC-
7 TICES.—

8 (A) EFFECT OF DISCLOSURE AND CENSOR-
9 SHIP.—An owner of covered foreign software
10 may not collect or store data of United States
11 consumers, as it relates to such covered foreign
12 software, if such owner complies with any re-
13 quest from a law enforcement agency, intel-
14 ligence agency, or other government entity of a
15 covered country—

16 (i) to disclose the consumer data of a
17 person in the United States; or

18 (ii) to censor the online activity of a
19 person in the United States.

20 (B) REPORT TO FEDERAL TRADE COMMIS-
21 SION AND ATTORNEY GENERAL OF THE UNITED
22 STATES.—Not later than 14 days after receiv-
23 ing a request described in subparagraph (A), an
24 owner of covered foreign software shall submit
25 to the Commission and the Attorney General of

the United States a report that includes a description of such request.

(C) ACCESS TO CONSUMER DATA IN SUBSIDIARIES.—Not later than 1 year after the date of enactment of this Act, the Commission, in consultation with the Attorney General of the United States, shall issue regulations to require an owner of covered foreign software to implement consumer data protection measures to ensure that any parent company in a covered country may not access the consumer data collected and stored, or otherwise held, by a subsidiary entity of such parent company in a country that is not a covered country.

(3) PROHIBITIONS ON STORAGE, USE, AND SHARING OF CONSUMER DATA.—

(A) USE, TRANSFER, AND STORAGE OF CONSUMER DATA.—With respect to the consumer data of any person in the United States, an owner of covered foreign software may not—

- (i) use such data in a covered country;
- (ii) transfer such data to a covered country; or
- (iii) store such data outside of the United States.

1 (B) SHARING OF CONSUMER DATA.—An
2 owner of covered foreign software may not
3 share with, sell to, or otherwise disclose to any
4 other commercial entity the consumer data of
5 any person in the United States.

6 (4) CENSORSHIP REMEDY.—In the case where
7 an owner of covered foreign software censors the on-
8 line activity of a person in the United States, such
9 owner shall provide any affected user with a means
10 to appeal such censorship.

11 (c) NONAPPLICATION OF COMMUNICATIONS DE-
12 CENCY ACT PROTECTIONS.—Notwithstanding section 230
13 of the Communications Act of 1934 (47 U.S.C. 230) (com-
14 monly known as the “Communications Decency Act”), an
15 owner of a covered foreign software shall not be considered
16 a provider of an interactive computer service for purposes
17 of subsection (c) of such section with respect to such cov-
18 ered foreign software.

19 (d) ENFORCEMENT BY FEDERAL TRADE COMMIS-
20 SION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this section or a regulation
23 promulgated under this section shall be treated as a
24 violation of a regulation under section 18(a)(1)(B)
25 of the Federal Trade Commission Act (15 U.S.C.

1 57a(a)(1)(B)) regarding unfair or deceptive acts or
2 practices.

3 (2) POWERS OF COMMISSION.—

4 (A) IN GENERAL.—The Commission shall
5 enforce this section and the regulations promul-
6 gated under the section in the same manner, by
7 the same means, and with the same jurisdic-
8 tion, powers, and duties as though all applicable
9 terms and provisions of the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.) were in-
11 corporated into and made a part of this Act.
12 Any person who violates this section or a regu-
13 lation promulgated under this section shall be
14 subject to the penalties and entitled to the
15 privileges and immunities provided in the Fed-
16 eral Trade Commission Act.

17 (B) ADDITIONAL RELIEF.—In addition to
18 the penalties provided in the Federal Trade
19 Commission Act (15 U.S.C. 41 et seq.), if a
20 court or the Commission (in a formal adjudica-
21 tive proceeding) determines that an owner of
22 covered foreign software violated this section or
23 a regulation promulgated under this section, the
24 court or the Commission shall prohibit the

1 owner from making such software available for
2 sale or download in the United States.

3 (3) REGULATIONS.—The Commission may pro-
4 mulgate regulations under section 553 of title 5,
5 United States Code, to carry out this section.

6 (4) SAVINGS CLAUSE.—Nothing in this section
7 shall be construed to limit the authority of the Com-
8 mission under any other provision of law.

9 (e) CRIMINAL OFFENSE.—

10 (1) IN GENERAL.—A software marketplace op-
11 erator or an owner of covered foreign software that
12 knowingly violates subsection (a) or (b) shall be
13 fined \$50,000 for each violation.

14 (2) CLARIFICATIONS.—

15 (A) SEPARATE VIOLATION.—For purposes
16 of paragraph (1), each download by a consumer
17 of a covered foreign software that does not
18 meet the requirements of subparagraph (A) of
19 subsection (a)(1) or is made available in viola-
20 tion of subparagraph (B) of such subsection
21 shall be treated as a separate violation.

22 (B) INDIVIDUAL OFFENSE.—An officer of
23 a software marketplace operator or of an owner
24 of covered foreign software who knowingly
25 causes a violation of subsection (a)(1) with the

1 intent to conceal the fact that the software is
2 covered foreign software shall be fined under
3 title 18, United States Code.

4 (3) REFERRAL OF EVIDENCE BY FTC.—When-
5 ever the Commission obtains evidence that a soft-
6 ware marketplace operator or owner of covered for-
7 eign software has engaged in conduct that may con-
8 stitute a violation of subsection (a) or (b), the Com-
9 mission shall transmit such evidence to the Attorney
10 General of the United States, who may institute
11 criminal proceedings under this subsection. Nothing
12 in this paragraph affects any other authority of the
13 Commission to disclose information.

14 (f) REPORT TO CONGRESS.—Not later than 1 year
15 after the date of the enactment of this Act, the Commis-
16 sion, in consultation with the Attorney General of the
17 United States, shall submit to Congress a report on the
18 implementation and enforcement of this section.

19 (g) EXPANSION OF COVERED TRANSACTIONS UNDER
20 THE DPA.—Section 721(a)(4)(B)(iii)(III) of the Defense
21 Production Act of 1950 (50 U.S.C.
22 4565(a)(4)(B)(iii)(III)) is amended by inserting “or com-
23 mercially available” after “sensitive”.

24 (h) EXPRESS PREEMPTION OF STATE LAW.—This
25 Act shall supersede any provision of a law, regulation, or

1 other requirement of any State or political subdivision of
2 a State to the extent that such provision relates to the
3 privacy or security of consumer data or the downloading
4 of covered foreign software.

5 (i) DEFINITIONS.—In this section:

6 (1) CENSOR.—

7 (A) IN GENERAL.—The term “censor”,
8 with respect to the online activity of a person
9 in the United States, means—

10 (i) to alter, delete, remove, or other-
11 wise make inaccessible user information
12 without the consent of such user; or

13 (ii) to alter, delete, remove, deny, pre-
14 vent, or otherwise prohibit user activity
15 without the consent of such user.

16 (B) EXCEPTION.—Such term shall not in-
17 clude any action by an owner of covered foreign
18 software that is taken for the purpose of re-
19 stricting access to, or availability of, material
20 that the owner considers to be obscene, lewd,
21 lascivious, filthy, excessively violent, harassing,
22 or otherwise objectionable, whether or not such
23 material is constitutionally protected.

24 (2) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (3) COVERED COUNTRY.—

2 (A) IN GENERAL.—Subject to subpara-
3 graph (B), the term “covered country”
4 means—

5 (i) China, Russia, North Korea, Iran,
6 Syria, Sudan, Venezuela, or Cuba;

7 (ii) any other country the government
8 of which the Secretary of State determines
9 has provided support for international ter-
10 rorism pursuant to—

11 (I) section 1754(c)(1)(A) of the
12 Export Control Reform Act of 2018
13 (50 U.S.C. 4318(c)(1)(A));

14 (II) section 620A of the Foreign
15 Assistance Act of 1961 (22 U.S.C.
16 2371);

17 (III) section 40 of the Arms Ex-
18 port Control Act (22 U.S.C. 2780); or

19 (IV) any other provision of law;
20 and

21 (iii) any other country designated by
22 the Attorney General of the United States
23 based on findings that such country’s con-
24 trol over potentially dangerous software
25 poses an undue or unnecessary risk to the

1 national security of the United States or to
2 the safety and security of United States
3 persons.

4 (B) PROCESS.—

5 (i) ADVANCE NOTICE TO CONGRESS.—

6 The Attorney General of the United States
7 shall not designate a country under sub-
8 paragraph (A)(iii) (or revoke such a des-
9 ignation under clause (iii)) unless the At-
10 torney General of the United States—

11 (I) provides not less than 30 days
12 notice prior to making such designa-
13 tion or revocation to—

14 (aa) the Committee on En-
15 ergy and Commerce of the House
16 of Representatives;

17 (bb) the Permanent Select
18 Committee on Intelligence of the
19 House of Representatives;

20 (cc) the Committee on Com-
21 merce, Science, and Transpor-
22 tation of the Senate; and

23 (dd) the Select Committee
24 on Intelligence of the Senate; and

1 (II) upon request, provides an in-
2 person briefing to each such Com-
3 mittee during the 30-day notice pe-
4 riod.

5 (ii) NOTICE AND PUBLICATION OF
6 DESIGNATION.—Upon designating a coun-
7 try under subparagraph (A)(iii), the Attor-
8 ney General of the United States shall
9 transmit a notification of the designation
10 to the Commission, and shall publish such
11 notification. Such designation shall become
12 effective on the day that is 60 days after
13 the date on which such notification is
14 transmitted and published.

15 (iii) REVOCATION OF DESIGNATION.—
16 The designation of a country under sub-
17 paragraph (A) may only be revoked by the
18 Attorney General of the United States.

19 (4) COVERED FOREIGN SOFTWARE.—

20 (A) IN GENERAL.—The term “covered for-
21 eign software” means any of the following:

22 (i) Software that is owned or directly
23 or indirectly controlled by a person de-
24 scribed in subparagraph (B).

1 (ii) Software that stores data of
2 United States consumers in a covered
3 country.

4 (B) PERSONS DESCRIBED.—A person de-
5 scribed in this subparagraph is—

6 (i) a person (other than an indi-
7 vidual)—

8 (I) that is organized under the
9 laws of a covered country;

10 (II) the principal operations of
11 which are conducted in a covered
12 country; or

13 (III) that is headquartered in a
14 covered country; or

15 (ii) a person (other than an indi-
16 vidual) that is, directly or indirectly, con-
17 trolled by a person described in clause (i).

18 (5) MOBILE APPLICATION.—The term “mobile
19 application” means a software program that runs on
20 the operating system of a smartphone, tablet com-
21 puter, or similar mobile electronic device.

22 (6) SOFTWARE.—The term “software” means
23 any computer software program, including a mobile
24 application.

1 (7) SOFTWARE MARKETPLACE OPERATOR.—
2 The term “software marketplace operator” means a
3 person who, for a commercial purpose, operates an
4 online store or marketplace through which software
5 is made available for download by consumers in the
6 United States.

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