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To preserve access to lawful content and prevent discrimination and unfair methods of competition on the internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 10, 2021

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

A BILL

To preserve access to lawful content and prevent discrimination and unfair methods of competition on the internet, 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 “Promoting Rights and
5 Online Speech Protections to Ensure Every Consumer is
6 Heard Act” or the “PRO-SPEECH Act”.

7 **SEC. 2. PRESERVING ACCESS TO LAWFUL CONTENT.**

8 (a) IN GENERAL.—Subject to subsection (b), an
9 internet platform may not engage in a practice that does
10 any of the following:

1 (1) Blocks or otherwise prevents a user or enti-
2 ty from accessing any lawful content, application,
3 service, or device that does not interfere with the
4 internet platform’s functionality or pose a data pri-
5 vacy or data security risk to a user.

6 (2) Degrades or impairs the access of a user or
7 entity to lawful internet traffic on the basis of con-
8 tent, application, service, or use of a device that does
9 not interfere with the internet platform’s functional-
10 ity or pose a data privacy or data security risk to
11 a user.

12 (b) EXCEPTIONS.—

13 (1) SMALL INTERNET PLATFORMS.—The prohi-
14 bitions under subsection (a) shall not apply to a
15 small internet platform unless—

16 (A) the Commission determines that the
17 benefits of expanding the application of such
18 prohibitions to 1 or more small internet plat-
19 forms outweigh the costs; and

20 (B) the Director of the Office of Manage-
21 ment and Budget approves such cost-benefit
22 analysis and publishes such approval in the
23 Federal Register.

24 (2) PUBLISHERS OF CONTENT, APPLICATIONS,
25 AND SERVICES.—The prohibitions under subsection

1 (a) shall not apply to the extent that an internet
 2 platform publicly proclaims to be a publisher, insofar
 3 as the internet platform is acting as a publisher, of
 4 any particular content, application, or service.

5 **SEC. 3. NONDISCRIMINATION.**

6 An internet platform may not take any action against
 7 a user or entity based on racial, sexual, religious, political
 8 affiliation, or ethnic grounds.

9 **SEC. 4. PROHIBITIONS ON UNFAIR METHODS OF COMPETI-**
 10 **TION.**

11 (a) IN GENERAL.—An internet platform may not en-
 12 gage in an unfair method of competition against any other
 13 internet platform (as determined by the Commission
 14 under the Federal Trade Commission Act (15 U.S.C. 41
 15 et seq.)).

16 (b) PRESUMED UNFAIR METHODS OF COMPETI-
 17 TION.—For purposes of subsection (a), the following ac-
 18 tions shall be presumed to be an unfair method of competi-
 19 tion:

20 (1) BLOCKING OR PROHIBITING USE.—Any ac-
 21 tion taken by a large internet platform that wholly
 22 blocks or prohibits an internet platform that com-
 23 petes with the large internet platform (or any affil-
 24 iate of the large internet platform) from making use
 25 of the large internet platform.

1 (2) UNREASONABLE DISCRIMINATION.—Any ac-
 2 tion taken by a large internet platform that unrea-
 3 sonably discriminates against an internet platform
 4 that competes with the large internet platform (or
 5 any affiliate of the large internet platform).

6 (c) DETERMINATION OF UNFAIR METHODS OF COM-
 7 PETITION.—The Commission may determine that an ac-
 8 tion taken by a large internet platform is presumed to be
 9 an unfair method of competition if—

10 (1) the Commission establishes that—

11 (A) such action by a large internet plat-
 12 form—

13 (i) is anti-competitive and likely to re-
 14 duce competition, reduce quality of service,
 15 or decrease innovation; and

16 (ii) is not likely to be remedied with-
 17 out government intervention; and

18 (B) the benefits of such a determination
 19 outweigh the costs; and

20 (2) the Director of the Office of Management
 21 and Budget approves such cost-benefit analysis and
 22 publishes such approval in the Federal Register.

23 **SEC. 5. TRANSPARENCY.**

24 (a) REQUIRED DISCLOSURES.—

1 (1) IN GENERAL.—Subject to subsection (b), an
2 internet platform shall disclose, on a publicly avail-
3 able and easily accessible website, accurate informa-
4 tion regarding the platform management practices,
5 performance characteristics, and commercial terms
6 of service of its app store, cloud computing service,
7 operating system, search engine, or social media net-
8 work sufficient to enable a reasonable user to make
9 an informed choice regarding the purchase or use of
10 such service and to develop, market, and maintain a
11 product or service on the internet platform.

12 (2) REQUIRED INFORMATION.—The informa-
13 tion to be disclosed pursuant to paragraph (1) shall
14 include the following:

15 (A) PLATFORM MANAGEMENT PRAC-
16 TICES.—Information regarding the platform
17 management practices of an internet platform
18 shall include the following:

19 (i) GENERAL PRACTICES.—A descrip-
20 tion of any content management or data
21 management practices.

22 (ii) APP STORE, OPERATING SYSTEM,
23 SEARCH ENGINE, OR SOCIAL MEDIA NET-
24 WORK.—With respect to an app store, op-
25 erating system, search engine, or social

media network, a description of any practice—

(I) regarding how the internet platform—

(aa) curates and targets content to users;

(bb) promotes content, services, or products, including its own content, services, or products;

(cc) moderates content; or

(dd) determines whether to demonetize a user's use of the internet platform by any means; or

(II) that directly or indirectly favors certain data or content over other data or content, including through use of techniques such as content placement or prioritization—

(aa) to benefit an affiliate;

or

(bb) in exchange for consideration, monetary or otherwise.

1 (iii) CLOUD COMPUTING SERVICE.—

2 With respect to a cloud computing service,
3 a description of any practice—

4 (I) regarding congestion manage-
5 ment, application-specific behavior,
6 device attachment, or data privacy
7 and data security; or

8 (II) that determines whether—

9 (aa) any content, applica-
10 tion, or service is lawful; and

11 (bb) a device interferes with
12 the cloud computing service's
13 functionality or poses an unrea-
14 sonable data privacy or data se-
15 curity risk to a user.

16 (iv) PUBLISHERS.—

17 (I) INTERNET PLATFORMS.—

18 With respect to an internet platform
19 that publicly proclaims to be a pub-
20 lisher, a description of any practice
21 that blocks or otherwise prevents a
22 user or entity from accessing any law-
23 ful content, application, service, or de-
24 vice that does not interfere with the
25 internet platform's functionality or

pose a risk of data privacy or data security to a user.

(II) AFFILIATES.—With respect to an internet platform that publicly proclaims to be a publisher and is an affiliate of a cloud computing service or operating system, a description of any practice that degrades or impairs a user or entity’s access to lawful internet traffic on the basis of content, application, service, or use of a device that does not interfere with the internet platform’s functionality or pose a risk to the data privacy or data security of a user.

(B) PERFORMANCE CHARACTERISTICS.—Information regarding the performance characteristics of an internet platform shall include the following:

(i) GENERAL CHARACTERISTICS.—A general description of the service, including the service technology.

(ii) CLOUD COMPUTING SERVICE.—With respect to a cloud computing service, a description of—

1 (I) the expected and actual ac-
2 cess speed and latency; and

3 (II) the capability of the service
4 to support real-time applications.

5 (iii) SERVICE WITH REQUIRED AP-
6 PROVAL.—With respect to an app store,
7 cloud computing service, or operating sys-
8 tem that requires approval before allowing
9 an application to use the internet plat-
10 form—

11 (I) the average time for a devel-
12 oper to receive such approval after ini-
13 tial submission; and

14 (II) the timeline for the internet
15 platform to resolve complaints and the
16 outcome of any such resolution.

17 (C) COMMERCIAL TERMS.—Information re-
18 garding the commercial terms of an internet
19 platform shall include a description of the fee
20 disclosures, privacy practices, and redress op-
21 tions for users, including the following:

22 (i) USAGE-BASED FEES.—With re-
23 spect to a cloud computing service, any
24 usage-based fees or fees for early termi-
25 nation or additional network services.

1 (ii) APPROVAL FEES.—With respect
2 to an app store, cloud computing service,
3 or operating system that requires approval
4 before allowing an application to use the
5 internet platform, any fees charged to
6 those seeking such approval.

7 (iii) THIRD-PARTY FEES.—With re-
8 spect to an app store, cloud computing
9 service, or operating system, any fees
10 charged to or by third parties associated
11 with a user’s decision to purchase an appli-
12 cation or other content that uses such
13 internet platform.

14 (iv) PRIORITIZATION FEES.—With re-
15 spect to an app store, operating system,
16 search engine, or social media network,
17 any fees charged for the placement or
18 prioritization of any content or application.

19 (v) PRIVACY PRACTICES.—A descrip-
20 tion of any data privacy practice that en-
21 tails the inspection of user-generated con-
22 tent or other internet platform information
23 and whether such content or information is
24 stored, provided to third parties, or used
25 for non-platform management purposes.

1 (vi) COMPLAINT RESOLUTION PRACTICES.—A description of any practice for
2 resolving the complaint or question of a
3 user.
4

5 (b) APPLICABILITY TO SMALL INTERNET PLATFORMS.—The requirements under subsection (a) shall not
6 apply to a small internet platform unless—
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8 (1) the Commission determines that the benefits of expanding the application of such requirements to 1 or more small internet platforms outweigh the costs; and
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12 (2) the Director of the Office of Management and Budget approves such cost-benefit analysis and
13 publishes such approval in the Federal Register.
14

15 **SEC. 6. ENFORCEMENT.**

16 (a) ENFORCEMENT AUTHORITY.—

17 (1) UNFAIR AND DECEPTIVE ACTS OR PRACTICE.—A violation of section 2, 3, or 5 shall be
18 treated as an unfair and deceptive act or practice proscribed under section 5(a) of the Federal Trade
19 Commission Act (15 U.S.C. 45(a)).
20
21

22 (2) UNFAIR METHODS OF COMPETITION.—Any
23 person who violates section 4 shall be liable for engaging in an unfair method of competition under
24

1 section 5(a) of the Federal Trade Commission Act
2 (15 U.S.C. 45(a)).

3 (b) POWERS OF THE COMMISSION.—

4 (1) IN GENERAL.—Notwithstanding any other
5 provision of law, the Commission shall enforce this
6 Act in the same manner, by the same means, and
7 with the same jurisdiction, powers, and duties as
8 though all applicable terms and provisions of the
9 Federal Trade Commission Act (15 U.S.C. 41 et
10 seq.) were incorporated into and made a part of this
11 Act.

12 (2) PRIVILEGES AND IMMUNITIES.—Notwith-
13 standing any other provision of law, any person who
14 violates this Act shall be subject to the penalties and
15 entitled to the privileges and immunities provided in
16 the Federal Trade Commission Act (15 U.S.C. 41 et
17 seq.).

18 (3) AUTHORITY PRESERVED.—Nothing in this
19 Act shall be construed to limit the authority of the
20 Commission under any other provision of law.

21 (c) COMPLAINTS TO THE COMMISSION.—

22 (1) IN GENERAL.—Any individual alleging a
23 violation of this Act may submit to the Commission
24 a complaint which briefly states the facts sur-
25 rounding such violation.

1 (2) NOTICE TO INTERNET PLATFORM.—Upon
 2 receiving a complaint described in paragraph (1),
 3 the Commission shall forward a statement of the
 4 complaint to the internet platform that is the subject
 5 of the alleged violation.

6 (3) REQUIREMENT TO ADDRESS COMPLAINT.—
 7 Upon receiving a forwarded complaint under para-
 8 graph (2), the internet platform shall, within a rea-
 9 sonable time (as specified by the Commission), ei-
 10 ther—

11 (A) make a reparation for any injury al-
 12 leged to have been caused in the complaint filed
 13 under paragraph (1) and notify the Commission
 14 of such reparation; or

15 (B) submit to the Commission a written
 16 response to the complaint.

17 (4) REPARATION.—If the internet platform
 18 makes a reparation under paragraph (3)(A) to the
 19 satisfaction of the Commission, the Commission
 20 shall relieve the internet platform of liability to the
 21 complainant for the particular violation of law thus
 22 complained of.

23 (5) INVESTIGATION.—

24 (A) IN GENERAL.—If the internet platform
 25 does not make a sufficient reparation under

1 paragraph (3)(A), or if there appears to be any
2 reasonable ground for investigating such com-
3 plaint, the Commission shall investigate the
4 matters complained of in such manner and by
5 such means as it shall deem proper.

6 (B) DIRECT DAMAGE.—No complaint shall
7 at any time be dismissed because of the absence
8 of direct damage to the complainant.

9 (C) INVESTIGATION CONCLUSION.—With
10 respect to any investigation conducted pursuant
11 to subparagraph (A), the Commission shall
12 issue an order concluding such investigation not
13 more than 5 months after the date on which the
14 complaint was filed.

15 **SEC. 7. RELATIONSHIP BETWEEN FEDERAL AND STATE**
16 **LAW.**

17 No State or political subdivision of a State may
18 adopt, maintain, enforce, or continue in effect any law,
19 regulation, rule, requirement, or standard that conflicts
20 with the requirements of this Act.

21 **SEC. 8. DEFINITIONS.**

22 In this Act:

23 (1) AFFILIATE.—The term “affiliate” means a
24 person that directly or indirectly owns or controls, is

1 owned or controlled by, or is under common owner-
2 ship or control with, another person.

3 (2) APP STORE.—The term “app store” means
4 a digital distribution platform for computer applica-
5 tions that includes at least 1 application from a per-
6 son unaffiliated with the operator of the digital dis-
7 tribution platform.

8 (3) CLOUD COMPUTING SERVICE.—The term
9 “cloud computing service” means a service offering
10 on-demand network access to a shared pool of
11 configurable computing resources (such as any net-
12 work, server, storage, application, or service) that
13 generally can be provisioned with minimal manage-
14 ment effort or service provider interaction.

15 (4) COMMISSION.—The term “Commission”
16 means the Federal Trade Commission.

17 (5) INTERNET PLATFORM.—The term “internet
18 platform” means an entity that owns or operates, ei-
19 ther directly or through an affiliate, an app store, a
20 cloud computing service, an operating system, a
21 search engine, or a social media network.

22 (6) LARGE INTERNET PLATFORM.—The term
23 “large internet platform” means an internet plat-
24 form with equal to or more than—

25 (A) 100,000,000 global active users; or

1 (B) \$500,000,000 in annual revenues, in-
2 cluding direct user fees, advertising revenues, or
3 other revenues associated with an app store, a
4 cloud computing service, an operating system, a
5 search engine, or a social media network.

6 (7) OPERATING SYSTEM.—The term “operating
7 system” means a computer program, implemented in
8 either software or firmware, that acts as an inter-
9 mediary between users of a computer and the com-
10 puter hardware, providing an environment in which
11 a user can execute, operate, or otherwise utilize an
12 application.

13 (8) OWN.—The term “own” means to hold an
14 equity interest (or the equivalent thereof) of more
15 than 10 percent.

16 (9) SEARCH ENGINE.—The term “search en-
17 gine” means a technology that enables a user to ini-
18 tiate a search query for particular information using
19 the internet and that is capable of returning at least
20 1 search result unaffiliated with the owner or oper-
21 ator of the search engine.

22 (10) SMALL INTERNET PLATFORM.—The term
23 “small internet platform” means an internet plat-
24 form that has—

1 (A) fewer than 100,000,000 global active
2 users; and

3 (B) less than \$500,000,000 in annual reve-
4 nues, including direct user fees, advertising rev-
5 enues, or other revenues associated with an app
6 store, a cloud computing service, an operating
7 system, a search engine, or a social media net-
8 work.

9 (11) SOCIAL MEDIA NETWORK.—

10 (A) IN GENERAL.—The term “social media
11 network” means an internet-enabled network
12 that hosts any information, comment, message,
13 still image, or moving image posted by a user
14 to facilitate interpersonal communication be-
15 tween or among users.

16 (B) EXCEPTION.—Such term does not in-
17 clude electronic mail or an online service, appli-
18 cation, or website for which the hosting of such
19 information or other content is incidental to the
20 provision of news, sports, entertainment, or
21 other information not generated by users.

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