

117TH CONGRESS
1ST SESSION

S. 797

To require transparency, accountability, and protections for consumers online.

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, MARCH 16), 2021

Mr. SCHATZ (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require transparency, accountability, and protections for consumers online.

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 “Platform Account-
5 ability and Consumer Transparency Act” or the “PACT
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMISSION.—Except as otherwise pro-
2 vided, the term “Commission” means the Federal
3 Trade Commission.

4 (2) DEMONETIZE.—The term “demonetize”,
5 with respect to content on an interactive computer
6 service, means to take action to prohibit the infor-
7 mation content provider that generated or dissemi-
8 nated the content from receiving direct financial
9 compensation from the interactive computer service
10 provider based on the content.

11 (3) DEPRIORITIZE.—The term “deprioritize”,
12 with respect to content on an interactive computer
13 service, means to take affirmative, content-specific
14 action to reduce the priority level of the content.

15 (4) ILLEGAL ACTIVITY.—The term “illegal ac-
16 tivity” means activity conducted by an information
17 content provider that has been determined by a trial
18 or appellate Federal or State court to violate Fed-
19 eral criminal or civil law.

20 (5) ILLEGAL CONTENT.—The term “illegal con-
21 tent” means information provided by an information
22 content provider that has been determined by a trial
23 or appellate Federal or State court to violate—

24 (A) Federal criminal or civil law; or

25 (B) State defamation law.

1 (6) INDIVIDUAL PROVIDER.—The term “indi-
2 vidual provider” means a provider of an interactive
3 computer service that, during the most recent 12-
4 month period—

5 (A) received fewer than 100,000 unique
6 monthly visitors; and

7 (B) accrued revenue of less than
8 \$1,000,000.

9 (7) INFORMATION CONTENT PROVIDER.—The
10 term “information content provider” has the mean-
11 ing given the term in section 230 of the Communica-
12 tions Act of 1934 (47 U.S.C. 230).

13 (8) INTERACTIVE COMPUTER SERVICE.—The
14 term “interactive computer service” has the meaning
15 given the term in section 230 of the Communica-
16 tions Act of 1934 (47 U.S.C. 230).

17 (9) POTENTIALLY POLICY-VIOLATING CON-
18 TENT.—The term “potentially policy-violating con-
19 tent” means content that may violate the acceptable
20 use policy of the provider of an interactive computer
21 service.

22 (10) SMALL BUSINESS PROVIDER.—The term
23 “small business provider” means a provider of an
24 interactive computer service that is not an individual

1 provider and, during the most recent 12-month pe-
2 riod—

3 (A) received fewer than 1,000,000 unique
4 monthly visitors; and

5 (B) accrued revenue of less than
6 \$50,000,000.

7 **SEC. 3. FINDINGS.**

8 Congress finds the following:

9 (1) Technological advancements involving the
10 internet and interactive computer service providers
11 have led to innovations that offer substantial benefit
12 to the people and the economy of the United States.

13 (2) People in the United States increasingly
14 rely on interactive computer services to commu-
15 nicate, gather information, and conduct transactions
16 that are central to our economic, political, social,
17 and cultural life.

18 (3) The content moderation decisions made by
19 providers of interactive computer services shape the
20 online information ecosystem available to people in
21 the United States and impact free expression.

22 (4) There is a compelling government interest
23 in having providers of interactive computer services
24 provide information to the public about their content
25 moderation policies and practices because of the im-

1 pact those policies may have on the speech interests
2 of their consumers.

3 (5) The people of the United States benefit
4 from transparent information about the decisions
5 interactive computer service providers make regard-
6 ing their content moderation practices, including re-
7 moving, maintaining, blocking, amplifying,
8 prioritizing, or deprioritizing information provided
9 by other consumers.

10 (6) The Federal Government should hold inter-
11 active computer service providers accountable when
12 they fail to respond to consumers' concerns about
13 their content moderation decisions.

14 (7) Federal and State court decisions and Fed-
15 eral statutes and regulations that apply to offline
16 commerce do not always govern online commerce
17 and communications.

18 (8) The rights of consumers should extend to
19 online commerce and communications to provide a
20 level playing field for all consumers and companies,
21 and to prevent wrongdoing and victimization of peo-
22 ple in the United States.

23 **SEC. 4. POLICY.**

24 It is the policy of the United States—

1 (1) to preserve the internet and other inter-
2 active computer services as forums for diversity of
3 political discourse, opportunities for cultural develop-
4 ment, and places for intellectual and commercial ac-
5 tivity;

6 (2) to ensure consumers have accessible and
7 clear information about the acceptable use policies of
8 interactive computer service providers so that con-
9 sumers are informed about the content moderation
10 policies and practices of those providers when they
11 participate in, or engage with, those services;

12 (3) to create accountability and transparency
13 measures to diminish the likelihood that interactive
14 computer service providers are engaging in unfair or
15 deceptive practices;

16 (4) to encourage the development and use of
17 technologies that minimize illegal activities and con-
18 tent and potentially policy-violating content;

19 (5) to ensure that the consumer rights of users
20 of interactive computer services are maintained and
21 extended to activities that the users may participate
22 in online; and

23 (6) to hold interactive computer service pro-
24 viders accountable, and exempt them from immunity
25 protections under section 230 of the Communica-

1 tions Act of 1934 (commonly known as “section 230
2 of the Communications Decency Act of 1996”) (47
3 U.S.C. 230), when they help develop illegal content
4 or contribute to illegal content or conduct online.

5 **SEC. 5. TRANSPARENCY AND PROCESS REQUIREMENTS.**

6 (a) ACCEPTABLE USE POLICY.—

7 (1) PUBLICATION OF ACCEPTABLE USE POL-
8 ICY.—A provider of an interactive computer service
9 shall publish an acceptable use policy in accordance
10 with paragraph (2) in a location that is easily acces-
11 sible to the user.

12 (2) CONTENTS OF POLICY.—The acceptable use
13 policy of a provider of an interactive computer serv-
14 ice shall—

15 (A) reasonably inform users about the
16 types of content that are allowed on the inter-
17 active computer service;

18 (B) explain the steps the provider takes to
19 ensure content complies with the acceptable use
20 policy;

21 (C) explain the means by which users can
22 notify the provider of potentially policy-violating
23 content, illegal content, or illegal activity, which
24 shall include—

1 (i) subject to subsection (e), making
2 available a live company representative
3 through a toll-free telephone number dur-
4 ing regular business hours for not fewer
5 than 8 hours per day and 5 days per week
6 to assist users with the process of making
7 a complaint;

8 (ii) an email address or relevant in-
9 take mechanism to handle user complaints;
10 and

11 (iii) subject to subsection (e), a com-
12 plaint system described in subsection (b);
13 and

14 (D) include publication of a biannual
15 transparency report outlining actions taken to
16 enforce the policy, as described in subsection
17 (d).

18 (b) COMPLAINT SYSTEM.—Subject to subsection (e),
19 a provider of an interactive computer service shall provide
20 a system that is easily accessible to a user through which
21 the user may submit in good faith, and track, a complaint
22 regarding any content or activity on the interactive com-
23 puter service, including a complaint regarding—

24 (1) potentially policy-violating content, illegal
25 content, or illegal activity; or

1 (2) a decision of the interactive computer serv-
2 ice provider to remove content posted by the infor-
3 mation content provider.

4 (c) PROCESSING OF COMPLAINTS.—

5 (1) COMPLAINTS REGARDING ILLEGAL CON-
6 TENT, ILLEGAL ACTIVITY, OR POTENTIALLY POLICY-
7 VIOLATING CONTENT.—

8 (A) ILLEGAL CONTENT OR ILLEGAL ACTIV-
9 ITY.—

10 (i) IN GENERAL.—Subject to sub-
11 section (e), and except as provided in
12 clause (ii), if a provider of an interactive
13 computer service receives notice of illegal
14 content or illegal activity on the interactive
15 computer service that substantially com-
16 plies with the requirements under para-
17 graph (3)(B)(ii) of section 230(c) of the
18 Communications Act of 1934 (47 U.S.C.
19 230(c)), as added by section 6(a), the pro-
20 vider shall remove the content or stop the
21 activity not later than 4 days after receiv-
22 ing the notice, subject to reasonable excep-
23 tions, including concerns about the legit-
24 imacy of the notice.

1 (ii) TIMELINE FOR NOTICE EMA-
2 NATING FROM DEFAULT JUDGMENTS AND
3 STIPULATED AGREEMENTS.—If a notice of
4 illegal content or illegal activity described
5 in clause (i) emanates from a default judg-
6 ment or stipulated agreement, that clause
7 shall be applied by substituting “10 days”
8 for “4 days”.

9 (B) POTENTIALLY POLICY-VIOLATING CON-
10 TENT.—Subject to subsection (e), if a provider
11 of an interactive computer service receives a
12 complaint made in good faith through the com-
13 plaint system of the provider established under
14 subsection (b) regarding potentially policy-vio-
15 lating content on the interactive computer serv-
16 ice, the provider shall, not later than 14 days
17 after receiving the complaint—

18 (i) review the content;

19 (ii) determine whether the content ad-
20 heres to the acceptable use policy of the
21 provider; and

22 (iii) initiate appropriate steps based
23 on the determination made under clause
24 (ii), subject to reasonable extensions in
25 cases requiring extraordinary investigation.

1 (2) PROCESS AFTER REMOVAL OF CONTENT.—

2 (A) REMOVAL BASED ON USER COM-
3 PLAINT.—

4 (i) IN GENERAL.—Subject to clause
5 (ii), if a provider of an interactive com-
6 puter service removes potentially policy-vio-
7 lating content based on a user complaint,
8 the provider of the interactive computer
9 service shall, concurrently with the re-
10 moval—

11 (I) notify the information content
12 provider and the complainant of the
13 removal and explain why the content
14 was removed;

15 (II) allow the information content
16 provider to appeal the decision; and

17 (III) notify the information con-
18 tent provider and the complainant
19 of—

20 (aa) the determination re-
21 garding the appeal under sub-
22 clause (II); and

23 (bb) in the case of a reversal
24 of the decision to remove the con-

1 tent in question, the reason for
2 the reversal.

3 (ii) EXCEPTIONS.—A provider of an
4 interactive computer service shall not be
5 required to provide an information content
6 provider with notice or an opportunity to
7 appeal under clause (i) if—

8 (I) the provider of the interactive
9 computer service is unable to contact
10 the information content provider after
11 taking reasonable steps to do so; or

12 (II)(aa) the provider of the inter-
13 active computer service reasonably be-
14 lieves that such notice would risk im-
15 minent harm to any person or impede
16 law enforcement activities; or

17 (bb) a law enforcement agency,
18 based on a reasonable belief that such
19 notice would interfere with an ongoing
20 investigation, requests that the pro-
21 vider of the interactive computer serv-
22 ice not provide such notice.

23 (B) REMOVAL BASED ON MODERATION DE-
24 CISIONS OF INTERACTIVE COMPUTER SERVICE
25 PROVIDER.—If a provider of an interactive com-

1 computer service receives notice, through a com-
2 plaint from the information content provider,
3 that the provider of the interactive computer
4 service removed content of the information con-
5 tent provider that the information content pro-
6 vider believes does not violate the acceptable
7 use policy of the provider of the interactive
8 computer service, the provider of the interactive
9 computer service shall, not later than 14 days
10 after receiving notice—

11 (i) review the content;

12 (ii) determine whether the content ad-
13 heres to the acceptable use policy of the
14 provider of the interactive computer serv-
15 ice;

16 (iii) take appropriate steps based on
17 the determination made under clause (ii);
18 and

19 (iv) notify the information content
20 provider regarding the determination made
21 under clause (ii) and steps taken under
22 clause (iii).

23 (d) BIENNIAL TRANSPARENCY REPORT.—

24 (1) IN GENERAL.—Subject to subsection (e), as
25 part of the acceptable use policy required under sub-

1 section (a), a provider of an interactive computer
2 service shall publish a transparency report every 6
3 months in accordance with this subsection.

4 (2) REQUIREMENTS.—A provider of an inter-
5 active computer service shall include in the trans-
6 parency report required under paragraph (1)—

7 (A) the total number of unique monthly
8 visitors to the interactive computer service dur-
9 ing the preceding 6-month and 12-month peri-
10 ods;

11 (B) the number of instances during the
12 preceding 6-month period in which illegal con-
13 tent, illegal activity, or potentially policy-vio-
14 lating content was flagged—

15 (i) due to a complaint by a user of the
16 interactive computer service;

17 (ii) internally, by—

18 (I) an employee or contractor of
19 the provider; or

20 (II) an internal automated detec-
21 tion tool, not including content or ac-
22 tivity identified as—

23 (aa) spam; or

24 (bb) fraudulent activity; or

1 (iii) by another type of entity, such as
2 a government agency, third-party re-
3 searcher, or other provider of an inter-
4 active computer service;

5 (C) the number of instances during the
6 preceding 6-month period in which the inter-
7 active computer service provider took action
8 with respect to illegal content, illegal activity, or
9 known potentially policy-violating content due
10 to its nature as illegal content, illegal activity,
11 or known potentially policy-violating content,
12 respectively, and the type of action taken, in-
13 cluding the number of instances of content re-
14 moval, content demonetization, content
15 deprioritization, appending content with an as-
16 sessment, account suspension, account removal,
17 or any other action taken in accordance with
18 the acceptable use policy of the provider, cat-
19 egorized by—

20 (i) the category of rule violated, with
21 respect to the acceptable use policy;

22 (ii) the source of the flag, including
23 government, user, internal automated de-
24 tection tool, coordination with other inter-
25 active computer service providers, or per-

1 sonnel employed or contracted for by the
2 provider;

3 (iii) the country of the information
4 content provider; and

5 (iv) whether the action was in re-
6 sponse to a coordinated campaign, as de-
7 termined by the interactive computer serv-
8 ice provider;

9 (D) the number of instances during the
10 preceding 6-month period in which the inter-
11 active computer service provider decided to not
12 take action under subsection (c)(1)(B)(iii) with
13 respect to content that violated the acceptable
14 use policy of the provider;

15 (E)(i) the number of instances during the
16 preceding 6-month period in which an informa-
17 tion content provider appealed a decision to re-
18 move potentially policy-violating content; and

19 (ii) the percentage of appeals described in
20 clause (i) that resulted in the restoration of
21 content;

22 (F) a descriptive summary of the kinds of
23 tools, practices, actions, and techniques used
24 during the preceding 6-month period in enforce-
25 ing the acceptable use policy of the interactive

1 computer service provider that does not jeop-
2 ardize the effectiveness of these tools; and

3 (G) any other information with respect to
4 the preceding 6-month period that would en-
5 hance the effectiveness of the transparency re-
6 port, as determined by the interactive computer
7 service provider.

8 (3) PRIVACY.—An interactive computer service
9 provider shall publish the transparency report under
10 paragraph (1) in a manner that preserves the pri-
11 vacy of information content providers.

12 (4) FORMAT.—A provider of an interactive
13 computer service shall publish the information de-
14 scribed in paragraph (2) with an open license, in a
15 machine-readable and open format, and in a location
16 that is easily accessible to consumers.

17 (e) INDIVIDUAL AND SMALL BUSINESS PROVIDER
18 EXEMPTIONS.—

19 (1) INDIVIDUAL PROVIDERS.—The following
20 provisions shall not apply to an individual provider:

21 (A) Clauses (i) and (iii) of subsection
22 (a)(2)(C) (relating to a live company represent-
23 ative and a complaint system, respectively).

24 (B) Subsection (b) (relating to a complaint
25 system).

1 (C) Paragraphs (1)(B) and (2) of sub-
2 section (c) (relating to processing complaints
3 regarding potentially policy-violating content
4 and the process after removal of such content,
5 respectively).

6 (D) Subsection (d) (relating to a trans-
7 parency report).

8 (2) SMALL BUSINESS PROVIDERS.—

9 (A) IN GENERAL.—The following provi-
10 sions shall not apply to a small business pro-
11 vider:

12 (i) Subsection (a)(2)(C)(i) (relating to
13 a live company representative).

14 (ii) Subsection (d) (relating to a
15 transparency report).

16 (B) DEADLINE FOR PROCESSING COM-
17 PLAINTS REGARDING POTENTIALLY POLICY-VIO-
18 LATING CONTENT.—Subsection (c)(1)(B) shall
19 be applied to a small business provider by sub-
20 stituting “21 days” for “14 days”.

21 (f) INTERNET INFRASTRUCTURE SERVICE EXEMP-
22 TION.—Subsections (a) through (e) shall not apply to—

23 (1) a provider of an interactive computer serv-
24 ice that is used by another interactive computer
25 service for the management, control, or operation of

1 that other interactive computer service, including for
2 services such as web hosting, domain registration,
3 content delivery networks, caching, security, back-
4 end data storage, and cloud management; or

5 (2) a provider of broadband internet access
6 service, as that term is defined in section 8.1(b) of
7 title 47, Code of Federal Regulations (or any suc-
8 cessor regulation).

9 (g) ENFORCEMENT BY COMMISSION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
11 TICES.—

12 (A) IN GENERAL.—A violation of sub-
13 section (c)(1)(B), (c)(2), or (d) shall be treated
14 as a violation of a rule defining an unfair or de-
15 ceptive act or practice under section
16 18(a)(1)(B) of the Federal Trade Commission
17 Act (15 U.S.C. 57a(a)(1)(B)).

18 (B) LIMITATION ON AUTHORITY.—Nothing
19 in subparagraph (A) shall be construed to su-
20 persede paragraph (1) or (2) of section 230(c)
21 of the Communications Act of 1934 (47 U.S.C.
22 230(c)) or to otherwise authorize the Commis-
23 sion to review any action or decision by a pro-
24 vider of an interactive computer service related

1 to the application of the acceptable use policy of
2 the provider.

3 (2) POWERS OF COMMISSION.—

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

12 (B) PRIVILEGES AND IMMUNITIES.—Ex-
13 cept as provided in subparagraph (C), any per-
14 son who violates this section shall be subject to
15 the penalties and entitled to the privileges and
16 immunities provided in the Federal Trade Com-
17 mission Act (15 U.S.C. 41 et seq.).

18 (C) NONPROFIT ORGANIZATIONS.—Not-
19 withstanding section 4 of the Federal Trade
20 Commission Act (15 U.S.C. 44) or any jurisdic-
21 tional limitation of the Commission, the Com-
22 mission shall also enforce this section, in the
23 same manner provided in subparagraphs (A)
24 and (B) of this paragraph, with respect to orga-

1 nizations not organized to carry on business for
2 their own profit or that of their members.

3 (h) NO EFFECT ON OTHER LAWS.—Nothing in this
4 section shall impair, limit, expand, or otherwise affect the
5 scope or application of—

6 (1) rule 65 of the Federal Rules of Civil Proce-
7 dure;

8 (2) section 1651 of title 28, United States Code
9 (commonly known as the “All Writs Act”); or

10 (3) any law pertaining to intellectual property,
11 including—

12 (A) title 17, United States Code; and

13 (B) the Act entitled “An Act to provide for
14 the registration and protection of trademarks
15 used in commerce, to carry out the provisions
16 of certain international conventions, and for
17 other purposes”, approved July 5, 1946 (com-
18 monly known as the “Trademark Act of 1946”
19 or the “Lanham Act”) (15 U.S.C. 1051 et
20 seq.).

21 (i) GAO REPORT ON WHISTLEBLOWER PROTECTION
22 AND AWARDS.—Not later than 1 year after the date of
23 enactment of this Act, the Comptroller General of the
24 United States shall submit a report to Congress assessing
25 the viability, including the anticipated cost and benefit to

1 consumers, of establishing a whistleblower protection and
2 award program for employees and contractors of inter-
3 active computer services, to be administered by the Com-
4 mission, that would enable reporting and enforcement of
5 violations of consumer protections that take place online.

6 (j) NIST VOLUNTARY FRAMEWORK.—

7 (1) IN GENERAL.—Not later than 18 months
8 after the date of enactment of this Act, the Director
9 of the National Institute of Standards and Tech-
10 nology shall develop a voluntary framework, with
11 input from relevant experts, that consists of non-
12 binding standards, guidelines, and best practices to
13 manage risk and shared challenges related to, for
14 the purposes of this Act, good faith moderation
15 practices by interactive computer service providers.

16 (2) CONTENTS.—The framework developed
17 under paragraph (1) shall include—

18 (A) technical standards and processes for
19 the sharing of information among providers of
20 an interactive computer service;

21 (B) recommendations on automated detec-
22 tion tools and the appropriate nature and level
23 of human review to correct for machine error in
24 assessing nuanced or context-specific issues;

1 (C) standards and processes for providing
 2 researchers access to data to conduct scientific,
 3 historical, statistical, and other relevant re-
 4 search, including with respect to content that is
 5 removed, demonetized, or deprioritized by the
 6 provider of an interactive computer service; and

7 (D) methods to strengthen the capacity of
 8 a provider of an interactive computer service to
 9 authenticate documentation of a determination
 10 by a court that content or an activity violates
 11 Federal law or State defamation law.

12 **SEC. 6. PROTECTION EXEMPTIONS.**

13 (a) EXEMPTION FROM LIABILITY PROTECTION.—
 14 Section 230(c) of the Communications Act of 1934 (47
 15 U.S.C. 230(c)) is amended by adding at the end the fol-
 16 lowing:

17 “(3) PROTECTION EXEMPTION.—

18 “(A) IN GENERAL.—Subject to subpara-
 19 graph (B), the protection under paragraph (1)
 20 shall not apply to a provider of an interactive
 21 computer service, with respect to illegal content
 22 shared or illegal activity occurring on the inter-
 23 active computer service, if the provider—

24 “(i) has actual knowledge of the ille-
 25 gal content or illegal activity; and

1 “(ii) does not remove the illegal con-
2 tent or stop the illegal activity—

3 “(I) within 4 days of acquiring
4 that knowledge, subject to reasonable
5 exceptions based on concerns about
6 the legitimacy of the notice; or

7 “(II) if the knowledge is acquired
8 from a notice that emanates from a
9 default judgment or stipulated agree-
10 ment—

11 “(aa) within 10 days of ac-
12 quiring that knowledge; or

13 “(bb) if the provider seeks
14 to vacate the default judgment or
15 stipulated agreement under sub-
16 paragraph (B)(i)(III) and the
17 proceeding initiated under that
18 subparagraph results in a deter-
19 mination that the default judg-
20 ment or stipulated agreement
21 should remain intact, within 24
22 hours of that determination.

23 “(B) NOTICE EMANATING FROM DEFAULT
24 JUDGMENT OR STIPULATED AGREEMENT.—

1 “(i) VACATUR OF DEFAULT JUDG-
2 MENT OR STIPULATED AGREEMENT.—Sub-
3 paragraph (A) shall not apply to a provider
4 of an interactive computer service if—

5 “(I) a notice of illegal content or
6 illegal activity described in that sub-
7 paragraph emanates from a default
8 judgment or stipulated agreement;

9 “(II) the notice described in sub-
10 clause (I) does not include a sworn af-
11 fidavit with sufficient evidence to con-
12 stitute a prima facie showing in sup-
13 port of each underlying cause of ac-
14 tion upon which the default judgment
15 or stipulated agreement was obtained;

16 “(III) not later than 10 days
17 after receiving the notice, the inter-
18 active computer service provider files,
19 in good faith, to intervene and seek to
20 vacate the default judgment or stipu-
21 lated agreement in the court in which
22 the judgment was obtained; and

23 “(IV) the proceeding initiated
24 under subclause (III) results in

1 vacatur of the default judgment or
2 stipulated agreement.

3 “(ii) COSTS AND FEES.—If the pro-
4 ceeding initiated under clause (i)(III) re-
5 sults in a determination that the default
6 judgment or stipulated agreement was
7 sought fraudulently, the provider of the
8 interactive computer service may seek re-
9 imbursement of costs and fees relating to
10 the proceeding.

11 “(C) NOTICE OF ILLEGAL CONTENT OR IL-
12 LEGAL ACTIVITY.—

13 “(i) IN GENERAL.—A provider of an
14 interactive computer service shall be
15 deemed to have actual knowledge of illegal
16 content or illegal activity for purposes of
17 subparagraph (A) only if the provider re-
18 ceives notice of such content or activity
19 that substantially complies with the re-
20 quirements under clause (ii) of this sub-
21 paragraph.

22 “(ii) ELEMENTS.—Notice of illegal
23 content or illegal activity provided to a
24 provider of an interactive computer service

1 as described in clause (i) shall be in writ-
2 ing and include the following:

3 “(I) A copy of the order from a
4 trial or appellate Federal or State
5 court, in its entirety, and unsealed if
6 the court has ordered it to be sealed,
7 under which the content or activity
8 was determined to violate Federal
9 criminal or civil law or State defama-
10 tion law, and to the extent available,
11 any references substantiating the va-
12 lidity of the order, such as the web
13 addresses of public court docket infor-
14 mation.

15 “(II) Information that is reason-
16 ably sufficient to allow the provider to
17 identify and locate the illegal content
18 or illegal activity, including each user
19 or account engaged in the illegal ac-
20 tivity and specific locations of content
21 or accounts involved in the illegal con-
22 tent or activity, such as URLs, links,
23 or unique usernames.

24 “(III) Information reasonably
25 sufficient to permit the provider to

1 contact the complaining party, which
2 shall include—

3 “(aa) if the complaining
4 party is a user of the interactive
5 computer service, information
6 identifying the user account; and

7 “(bb) if the complaining
8 party is not a user of the inter-
9 active computer service, an email
10 address of the complaining party.

11 “(IV) A statement by the com-
12 plaining party, made under penalty of
13 perjury in accordance with section
14 1746 of title 28, United States Code,
15 that—

16 “(aa) the information in the
17 notice is accurate; and

18 “(bb) the content or activity
19 described in the notice has been
20 determined by a trial or appellate
21 Federal or State court to violate
22 Federal criminal or civil law or
23 State defamation law.

24 “(D) NOTICE TO INFORMATION CONTENT
25 PROVIDER BEFORE REMOVAL OR STOPPING.—A

1 provider of an interactive computer service that
2 receives notice of illegal content or illegal activ-
3 ity shall notify the information content provider
4 before removing the content or stopping the ac-
5 tivity, subject to commercially reasonable expect-
6 tations.

7 “(E) LIMITATIONS FOR INTERNET INFRA-
8 STRUCTURE SERVICES.—Subparagraph (A)
9 shall not apply with respect to—

10 “(i) an interactive computer service
11 that is used by another interactive com-
12 puter service for the management, control,
13 or operation of that other interactive com-
14 puter service, including for services such as
15 web hosting, domain registration, content
16 delivery networks, caching, security, back-
17 end data storage, and cloud management;
18 or

19 “(ii) a provider of broadband internet
20 access service, as that term is defined in
21 section 8.1(b) of title 47, Code of Federal
22 Regulations (or any successor regulation).

23 “(F) MONITORING OR AFFIRMATIVE FACT-
24 SEEKING NOT REQUIRED.—Nothing in this
25 paragraph shall be construed to condition the

1 applicability of paragraph (1) to a provider of
2 an interactive computer service on the provider
3 monitoring the interactive computer service or
4 affirmatively seeking facts indicating illegal con-
5 tent or illegal activity in order to identify in-
6 stances of content or activity additional to any
7 instances about which the provider has received
8 notice.

9 “(G) ENFORCEMENT EXEMPTION.—Noth-
10 ing in this paragraph shall be construed to im-
11 pair or limit the application of paragraph (1) or
12 (2) of subsection (e).

13 “(H) NO EFFECT ON OTHER LAWS.—
14 Nothing in this paragraph shall impair, limit,
15 expand, or otherwise affect the scope or applica-
16 tion of—

17 “(i) rule 65 of the Federal Rules of
18 Civil Procedure;

19 “(ii) section 1651 of title 28, United
20 States Code (commonly known as the ‘All
21 Writs Act’); or

22 “(iii) any law pertaining to intellectual
23 property, including—

24 “(I) title 17, United States Code;

25 and

1 “(II) the Act entitled “An Act to
2 provide for the registration and pro-
3 tection of trademarks used in com-
4 merce, to carry out the provisions of
5 certain international conventions, and
6 for other purposes”, approved July 5,
7 1946 (commonly known as the
8 “Trademark Act of 1946” or the
9 ‘Lanham Act’) (15 U.S.C. 1051 et
10 seq.).”.

11 (b) DEFINITIONS.—Section 230(f) of the Commu-
12 nications Act of 1934 (47 U.S.C. 230(f)) is amended by
13 adding at the end the following:

14 “(5) ILLEGAL ACTIVITY.—The term ‘illegal ac-
15 tivity’ means activity conducted by an information
16 content provider that has been determined by a trial
17 or appellate Federal or State court to violate Fed-
18 eral criminal or civil law.

19 “(6) ILLEGAL CONTENT.—The term ‘illegal
20 content’ means information provided by an informa-
21 tion content provider that has been determined by a
22 trial or appellate Federal or State court to violate—

23 “(A) Federal criminal or civil law; or

24 “(B) State defamation law.”.

1 (c) TECHNICAL CORRECTION.—Section 230(c)(2)(B)
2 of the Communications Act of 1934 (47 U.S.C.
3 230(c)(2)(B)) is amended by striking “paragraph (1)”
4 and inserting “subparagraph (A)”.

5 **SEC. 7. FEDERAL AND STATE ENFORCEMENT.**

6 Section 230(e)(1) of the Communications Act of
7 1934 (47 U.S.C. 230(e)) is amended to read as follows:

8 “(1) NO EFFECT ON FEDERAL CRIMINAL OR
9 CIVIL LAW.—Nothing in this section shall be con-
10 strued to limit, impair, or prevent the enforcement
11 or investigation by the Federal Government or a
12 State attorney general, as applicable, of—

13 “(A) any other Federal criminal or civil
14 statute; or

15 “(B) any regulation of an Executive agen-
16 cy (as defined in section 105 of title 5, United
17 States Code) or an establishment in the legisla-
18 tive branch of the Federal Government.”.

19 **SEC. 8. SEVERABILITY.**

20 If any provision of this Act or an amendment made
21 by this Act, or the application of such a provision or
22 amendment to any person or circumstance, is held to be
23 unenforceable or invalid, the remaining provisions of this
24 Act and amendments made by this Act, and the applica-
25 tion of the provision or amendment so held to other per-

1 sons not similarly situated or to other circumstances, shall
2 not be affected thereby.

3 **SEC. 9. EFFECTIVE DATE.**

4 This Act and the amendments made by this Act shall
5 take effect on the date that is 18 months after the date
6 of enactment of this Act.

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