117TH CONGRESS  
1ST SESSION  
H. R. 3067

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2021

Ms. SCHAKOWSKY (for herself and Ms. CASTOR of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Online Consumer Prote-
tection Act”.

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SEC. 2. TERMS OF SERVICE REQUIRED FOR SOCIAL MEDIA PLATFORMS AND ONLINE MARKETPLACES.

(a) In General.—Each social media platform or online marketplace shall establish, maintain, and make publicly available at all times and in a machine-readable format, terms of service in a manner that is clear, easily understood, and written in plain and concise language. The terms of service shall meet the following requirements:

(1) The terms of service shall include—

   (A) any terms or conditions of use of any service provided by such person to a consumer;

   (B) any policies of such person with regard to such service or use of such service by a consumer; and

   (C) the consumer protection policy consistent with subsection (b).

(2) The terms of service shall cover issues related to the behavior of a service or a user of such service, and shall at a minimum include terms of use related to—

   (A) payment methods;

   (B) content ownership, including content generated by a user;

   (C) policies related to sharing user content with third parties;
(D) any disclaimers, limitations, notices of nonliability, or the consequences of not agreeing to or complying with the terms of service; and

(E) any other topic the Commission deems appropriate.

(b) REQUIRED CONSUMER PROTECTION POLICY.—

(1) FOR SOCIAL MEDIA PLATFORMS.—For social media platforms, the consumer protection policy required by subsection (a) shall include—

(A) a description of the content and behavior permitted or prohibited on its service both by the platform and by users;

(B) whether content may be blocked, removed, or modified, or if service to users may be terminated and the grounds upon which such actions will be taken;

(C) whether a person can request that content be blocked, removed, or modified, or that a user’s service be terminated, and how to make such a request;

(D) a description of how a user will be notified of and can respond to a request that his or her content be blocked, removed, or modified, or service be terminated, if such actions are taken;
(E) how a person can appeal a decision to
block, remove, or modify content, allow content
to remain, or terminate or not terminate service
to a user, if such actions are taken; and

(F) any other topic the Commission deems
appropriate.

(2) FOR ONLINE MARKETPLACES.—For online
marketplaces, the consumer protection policy re-
quired by subsection (a) shall include—

(A) a description of the products, product
descriptions, and marketing material, allowed or
disallowed on the marketplace;

(B) whether a product, product descrip-
tions, and marketing material may be blocked, removed, or modified, or if service to a user
may be terminated and the grounds upon which
such actions will be taken;

(C) whether users will be notified of prod-
ucts that have been recalled or are dangerous,
and how they will be notified;

(D) for users—

(i) whether a user can report sus-
ppected fraud, deception, dangerous prod-
ucts, or violations of the online market-
place’s terms of service, and how to make such report;

(ii) whether a user who submitted a report will be notified of whether action was taken as a result of the report, the action that was taken and the reason why action was taken or not taken, and how the user will be notified;

(iii) how to appeal the result of a report; and

(iv) under what circumstances a user is entitled to refund, repair, or other remedy and the remedy to which the user may be entitled, how the user will be notified of such entitlement, and how the user may claim such remedy; and

(E) for sellers—

(i) how sellers are notified of a report by a user or a violation of the terms of service or consumer protection policy;

(ii) how to contest a report by a user;

(iii) how a seller who is the subject of a report will be notified of what action will be or must be taken as a result of the report and the justification for such action;
(iv) how to appeal a decision of the
online marketplace to take an action in re-
response to a user report or for a violation
of the terms of service or consumer protec-
tion policy; and

(v) the policy regarding refunds, re-
pairs, replacements, or other remedies as a
result of a user report or a violation of the
terms of service or consumer protection
policy.

(c) Standard Short-Form Statements and
Graphic Icons for Consumer Protection Prac-
tices.—

(1) Study and report.—Not later than 180
days after the date of the enactment of this Act, the
Commission shall conduct a study to determine the
most effective method of communicating common
consumer protection practices in short-form con-
sumer disclosure statements or graphic icons that
disclose the consumer protection and content mod-
eration practices of social media platforms and on-
line marketplaces. The Commission shall submit a
report to the Committee on Energy and Commerce
of the House of Representatives and the Committee
on Commerce, Science, and Transportation of the
Senate with the results of the study. The report shall also be made publicly available on the website of the Commission.

(2) REGULATIONS.—Except as provided in paragraph (3), after completion of the study and not later than 1 year after the date of the enactment of this Act, the Commission shall finalize regulations based on the results of such study that require social media platforms and online marketplaces to communicate their consumer protection and content moderation practices, and any other information as the Commission may determine, in a clear and conspicuous manner.

(3) EXCEPTION.—If the Commission determines, by a majority vote of the Commissioners, that short-form consumer disclosure statements or graphic icons will not advance consumer understanding of consumer protection and content moderation practices of social media platforms and online marketplaces, the Commission shall include its reasoning for making that determination in the report to Congress required by paragraph (1) and shall not finalize the rulemaking until it determines such rules would advance consumer understanding of consumer
protection and content moderation practices of social
media platforms and online marketplaces.

SEC. 3. CONSUMER PROTECTION PROGRAM.

(a) In General.—Each social media platform and
online marketplace shall establish and implement a con-
sumer protection program that includes policies, practices,
and procedures regarding consumer protection and con-
tent moderation—

(1) to—

(A) ensure compliance with applicable Fed-
eral, State, and local consumer protection laws;

(B) develop, implement, and ensure com-
pliance with the terms of service required by
section 2;

(C) develop and implement policies regard-
ing the content and behavior permitted on its
service both by the platform and users, and en-
sure compliance with such policies, practices
and procedures;

(D) mitigate risks that could be harmful to
consumer’s safety, well-being, and reasonable
expectations of users of the social media plat-
tform or online marketplace;

(E) implement reasonable safeguards with-
in, and training and education of employees and
contractors of, the social media platform or online marketplace to promote compliance with all consumer protection laws and the consumer protection program; and

(F) disclose any other requirement the Commission deems appropriate; and

(2) taking into consideration—

(A) the size of, and the nature, scope, and complexity of the activities engaged in by the social media platform and online marketplace;

(B) the activities engaged in by users on the social media platform or online marketplace; and

(C) the cost of implementing the program.

(b) ADDITIONAL REQUIREMENTS.—As part of the consumer protection program, a social media platform or online marketplace shall—

(1) establish processes to monitor, manage, and enforce the social media platform’s or online marketplace’s consumer protection program, and demonstrate the covered entity’s compliance with Federal, State, and local consumer protection laws;

(2) establish processes to assess and mitigate the risks to individuals resulting from the social media platform’s or online marketplace’s amplifi-
cation of content or products not in compliance with
its terms of service;

(3) establish a process to periodically review
and update the consumer protection program;

(4) appoint a consumer protection officer, who
reports directly to the chief executive officer; and

(5) establish and implement controls to monitor
and mitigate known or reasonably foreseeable risks
to consumers resulting from hosting content or prod-
ucts.

(c) ANNUAL FILINGS TO THE FTC.—

(1) FILING REQUIREMENTS.—Each social
media platform or online marketplace that either has
annual revenue in excess of $250,000 in the prior
year or that has more than 10,000 monthly active
users on average in the prior year, shall be required
to submit to the Commission, on an annual basis, a
filing that includes—

(A) a detailed and granular description of
each of the requirements in section 2 and this
section;

(B) the name and contact information of
the consumer protection officer required under
subsection (b)(4); and
(C) a description of any material changes in the consumer protection program or the terms of service since the most recent prior disclosure to the Commission.

(2) OFFICER CERTIFICATION.—For each entity that submits an annual filing under paragraph (1), the entity’s principal executive officer and the consumer protection officer required under subsection (b)(4), shall be required to certify in each such annual filing that—

(A) the signing officer has reviewed the filing;

(B) based on such officer’s knowledge, the filing does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements, in light of the circumstances under which such statements were made, not misleading;

(C) based on such officer’s knowledge, the filing fairly presents in all material respects the consumer protection practices of the social media platform or online marketplace; and

(D) the signing consumer protection officer—
(i) is responsible for establishing and maintaining safeguards and controls to protect consumers and administer the consumer protection program; and

(ii) has provided all material conclusions about the effectiveness of such safeguards and controls.

(3) Public Availability.—The Commission shall make publicly available on the website of the Commission the filings submitted under paragraph (1). The Commission may withhold information included in such a filing if the Commission determines such information should not be public. If the Commission withholds any information, the Commission shall make publicly available on the website the category of information withheld and the reasons for withholding it.

SEC. 4. ENFORCEMENT.

(a) Enforcement by Federal Trade Commission.—

(1) Unfair or Deceptive Acts or Practices.—Any violation of this Act shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C.
57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) Powers of Commission.—The Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(b) Regulations.—The Commission shall promulgate regulations under section 553 of title 5, United States Code, to carry out the purposes of this Act.

(e) Private Right of Action.—

(1) Enforcement by Individuals.—

(A) In General.—An individual alleging damages as a result of a violation of this Act may bring a civil action in any court of competent jurisdiction, State or Federal.

(B) Relief.—In a civil action brought under subparagraph (A) in which the plaintiff prevails, the court may award—
(i) damages as provided in subparagraph (C);
(ii) reasonable attorney’s fees and litigation costs; and
(iii) any other relief, including equitable or declaratory relief, that the court determines appropriate.

(C) DAMAGES.—A prevailing plaintiff is entitled to actual damages as a result of the violation of this Act.

(2) INVALIDITY OF PRE-DISPUTE ARBITRATION AGREEMENTS AND PRE-DISPUTE JOINT ACTION WAIVERS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, no pre-dispute arbitration agreement or pre-dispute joint action waiver shall be valid or enforceable with respect to a dispute arising under this Act.

(B) APPLICABILITY.—Any determination as to whether or how this paragraph applies to any dispute shall be made by a court, rather than an arbitrator, without regard to whether such agreement purports to delegate such determination to an arbitrator.

(C) DEFINITIONS.—In this paragraph:
Pre-dispute arbitration agreement.—The term “pre-dispute arbitration agreement” means any agreement to arbitrate a dispute that has not arisen at the time of making the agreement.

Pre-dispute joint-action waiver.—The term “pre-dispute joint-action waiver” means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administration, or other forum, concerning a dispute that has not yet arisen at the time of making the agreement.

Dispute.—The term “dispute” means any claim related to an alleged violation of this Act and between an individual and a covered organization.

Enforcement by State Attorneys General.—

(1) In general.—If the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has
violated or is violating this Act, the attorney general, official, or agency of the State, in addition to any authority it may have to bring an action in State court under its consumer protection law, may bring a civil action in any appropriate United States district court or in any other court of competent jurisdiction, including a State court, to—

(A) enjoin further such violation by such person;

(B) enforce compliance with this Act;

(C) obtain civil penalties; and

(D) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) Notice and intervention by the FTC.—The attorney general of a State shall provide prior written notice of any action under paragraph (1) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action. The Commission shall have the right—

(A) to intervene in the action;
(B) upon so intervening, to be heard on all matters arising therein; and

(C) to file petitions for appeal.

(3) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this Act alleged in the complaint.

(4) RELATIONSHIP WITH STATE-LAW CLAIMS.—If the attorney general of a State has authority to bring an action under State law directed at acts or practices that also violate this Act, the attorney general may assert the State-law claim and a claim under this Act in the same civil action.

SEC. 5. RELATIONSHIP TO OTHER LAWS.

(a) EFFECT OF OTHER LAWS.—Section 230 of the Communications Act of 1934 (47 U.S.C. 230) shall not apply to any violation of this Act.

(b) EFFECT ON STATE LAWS.—Nothing in this Act or any regulation promulgated under this Act shall preempt or otherwise affect any State or local law.
(c) **Severability.**—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

SEC. 6. **FTC Enforcement Authority.**

(a) **In General.**—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

“(6) **No Effect on FTC Enforcement.**—Nothing in this section shall be construed to impair the enforcement by the Federal Trade Commission of any provision of law enforced by the Federal Trade Commission.”.

(b) **Applicability.**—The amendment made by this section shall apply with respect to any action or proceeding that is commenced on or after the date of the enactment of this Act.

SEC. 7. **Definitions.**

As used in this Act, the following definitions apply:

(1) **Commission.**—The term “Commission” means the Federal Trade Commission.

(2) **Consumer Product.**—The term “consumer product” has the meaning given such term in
section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)).

(3) ONLINE MARKETPLACE.—The term “online marketplace” means a website or web application, that—

(A) includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States; and

(B) hosts one or more third-party sellers.

(4) SELLER.—The term “seller” means a person or entity that sells, offers to sell, or contracts to sell a consumer product through an online marketplace’s platform.

(5) SOCIAL MEDIA PLATFORM.—The term “social media platform” means a website or mobile web application that—

(A) permits a person to become a registered user, establish an account, or create a profile for the purpose of allowing the user to create, share, and view user-generated content through such an account or profile;
(B) enables one or more users to generate content that can be viewed by other users of the platform; and

(C) primarily serves as a medium for users to interact with content generated by other users of the medium and for the platform to deliver ads to users.

(6) USER.—The term “user” means a person or entity that uses a social media platform or online marketplace for any purpose, including advertisers and sellers, regardless of whether that person has an account or is otherwise registered with the platform.