

116TH CONGRESS
1ST SESSION

S. 1914

To amend the Communications Decency Act to encourage providers of interactive computer services to provide content moderation that is politically neutral.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2019

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

A BILL

To amend the Communications Decency Act to encourage providers of interactive computer services to provide content moderation that is politically neutral.

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 “Ending Support for
5 Internet Censorship Act”.

6 **SEC. 2. POLITICAL NEUTRALITY IN CONTENT MODERA-**
7 **TION.**

8 (a) IN GENERAL.—Section 230 of the Communica-
9 tions Act of 1934 (47 U.S.C. 230) is amended—

1 (1) in subsection (c), by adding at the end the
2 following new paragraph:

3 “(3) REQUIREMENT OF POLITICALLY UNBIASED
4 CONTENT MODERATION BY COVERED COMPANIES.—

5 “(A) IN GENERAL.—Paragraphs (1) and
6 (2) shall not apply in the case of a covered com-
7 pany unless the company has in effect an im-
8 munity certification from the Federal Trade
9 Commission (referred to in this paragraph as
10 the ‘Commission’) under subparagraph (B) that
11 the company does not moderate information
12 provided by other information content providers
13 in a manner that is biased against a political
14 party, political candidate, or political viewpoint.

15 “(B) FEDERAL TRADE COMMISSION IMMUN-
16 NITY CERTIFICATION.—

17 “(i) IN GENERAL.—The Commission
18 shall certify any provider of an interactive
19 computer service that—

20 “(I) is a covered company or an-
21 ticipates that it will become a covered
22 company within the next 2 years;

23 “(II) applies to the Commission
24 for a certification under this subpara-
25 graph; and

1 “(III) proves to the Commission
2 by clear and convincing evidence that
3 the provider does not (and, during the
4 2-year period preceding the date on
5 which the provider submits the appli-
6 cation for certification, did not) mod-
7 erate information provided by other
8 information content providers in a po-
9 litically biased manner.

10 “(ii) POLITICALLY BIASED MODERA-
11 TION.—The moderation practices of a pro-
12 vider of an interactive computer service are
13 politically biased if—

14 “(I) the provider moderates in-
15 formation provided by other informa-
16 tion content providers in a manner
17 that—

18 “(aa) is designed to nega-
19 tively affect a political party, po-
20 litical candidate, or political view-
21 point; or

22 “(bb) disproportionately re-
23 stricts or promotes access to, or
24 the availability of, information
25 from a political party, political

1 candidate, or political viewpoint;

2 or

3 “(II) an officer or employee of
4 the provider makes a decision about
5 moderating information provided by
6 other information content providers
7 that is motivated by an intent to neg-
8 atively affect a political party, political
9 candidate, or political viewpoint.

10 “(iii) EXCEPTIONS.—

11 “(I) BUSINESS NECESSITY.—An
12 action of a provider of an interactive
13 computer service that disproportion-
14 ately restricts access to, or the avail-
15 ability of, information from a political
16 party, political candidate, or political
17 viewpoint shall not be considered to be
18 a politically biased moderation prac-
19 tice if the action is necessary for busi-
20 ness or the information involved is not
21 speech that would be protected under
22 the First Amendment of the United
23 States Constitution, there is no avail-
24 able alternative that has a less dis-
25 proportionate effect, and the provider

1 does not act with the intent to dis-
2 criminate based on political affiliation,
3 political party, or political viewpoint.

4 “(II) ACTIONS BY EMPLOYEES.—

5 A provider of an interactive computer
6 service shall not be denied a certifi-
7 cation under this subparagraph on the
8 basis of an employee of the provider
9 acting in the manner described in
10 clause (ii)(II) in making a decision
11 about moderating information pro-
12 vided by other information content
13 providers if the provider, immediately
14 upon learning of the actions of the
15 employee—

16 “(aa) publicly discloses in a
17 conspicuous manner that an em-
18 ployee of the provider acted in a
19 politically biased manner with re-
20 spect to moderating information
21 content; and

22 “(bb) terminates or other-
23 wise disciplines the employee.

24 “(iv) CERTIFICATION PROCESS.—

1 “(I) APPROVAL.—The Commis-
2 sion shall not certify a provider of an
3 interactive computer service under
4 this subparagraph unless at least one
5 more than a majority of the Commis-
6 sioners approve such certification.

7 “(II) TIMELINE.—The Commis-
8 sion shall ensure that timely applica-
9 tions for certification under this sub-
10 paragraph are processed within 6
11 months.

12 “(III) PUBLICATION OF DIS-
13 SENTING OPINIONS.—The Commission
14 shall make publicly available the dis-
15 senting opinion of any Commissioner
16 who disagrees with a decision of the
17 Commission to certify, or deny certifi-
18 cation to, a provider of an interactive
19 computer service.

20 “(IV) PUBLIC INPUT.—The Com-
21 mission shall establish a process to
22 allow information content providers
23 to—

24 “(aa) submit complaints or
25 evidence that they have been sub-

1 ject to politically biased content
2 moderation by a provider of an
3 interactive computer service; and

4 “(bb) attend or participate
5 in any hearings that the Commis-
6 sion holds with respect to an ap-
7 plication for certification from a
8 provider.

9 “(V) RENEWALS.—An applica-
10 tion to renew a certification shall be
11 treated in the same manner as an ap-
12 plication for a new certification.

13 “(C) DURATION OF CERTIFICATION.—

14 “(i) IN GENERAL.—Subject to clause
15 (ii), a certification obtained under subpara-
16 graph (B) shall remain in effect with re-
17 spect to a provider of an interactive com-
18 puter service for a period of 2 years, and
19 may subsequently be renewed for addi-
20 tional 2-year periods.

21 “(ii) EXTENSION FOR PROCESSING A
22 SUBSEQUENT APPLICATION.—If a provider
23 of an interactive computer service submits
24 an application to renew a certification
25 under subparagraph (B) while such certifi-

1 cation is still in effect, such certification
 2 shall remain in effect while the Commis-
 3 sion processes such application, but in no
 4 case shall a certification remain in effect
 5 for more than 30 months without being re-
 6 newed.

7 “(D) COSTS.—

8 “(i) IN GENERAL.—The Commission
 9 shall charge a fee in connection with an
 10 application from a provider of an inter-
 11 active computer service for a certification
 12 (or a renewal of a certification) under sub-
 13 paragraph (B).

14 “(ii) LIMITATION.—The amount of
 15 any fee imposed under clause (i) with re-
 16 spect to an application shall not exceed the
 17 costs to the Commission in processing such
 18 application.”; and

19 (2) in subsection (f), by adding at the end the
 20 following new paragraphs:

21 “(5) COVERED COMPANY.—The term ‘covered
 22 company’ means a provider of an interactive com-
 23 puter service (other than an organization described
 24 in section 501(c) of the Internal Revenue Code of
 25 1986 which is exempt from taxation under section

1 501(a) of such Code) that, at any time during the
2 most recent 12-month period—

3 “(A) had more than 30,000,000 active
4 monthly users in the United States;

5 “(B) had more than 300,000,000 active
6 monthly users worldwide; or

7 “(C) had more than \$500,000,000 in glob-
8 al annual revenue.

9 “(6) MODERATE.—

10 “(A) IN GENERAL.—The term ‘moderate’
11 means—

12 “(i) to influence if, when, where, or
13 how information or other content provided
14 by a third-party user appears on a covered
15 company’s interactive computer service; or

16 “(ii) to alter the information or other
17 content provided by a third-party user that
18 appears on a covered company’s interactive
19 computer service.

20 “(B) ALGORITHMS.—Such term shall in-
21 clude actions taken through an algorithm or
22 other automated process.

23 “(7) BUSINESS NECESSITY.—The term ‘nec-
24 essary for business’ refers to a lawful act that ad-
25 vances the growth, development, or profitability of a

1 company but does not include any action designed to
2 appeal to, or gain favor from, persons or groups be-
3 cause of their political beliefs, political party mem-
4 bership, or support for political candidates.”.

5 (b) TECHNICAL AMENDMENT.—Section 230(c)(2)(B)
6 of the Communications Act of 1934 (47 U.S.C.
7 230(c)(2)(B)) is amended by striking “paragraph (1)”
8 and inserting “subparagraph (A)”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect on the date that is 18
11 months after the date of enactment of this Act.

12 **SEC. 3. AUTHORITIES AND DUTIES OF THE FEDERAL**
13 **TRADE COMMISSION.**

14 (a) IN GENERAL.—The Federal Trade Commission
15 (referred to in this section as the “Commission”) is au-
16 thorized to do the following:

17 (1) STAFFING.—To hire sufficient staff (wheth-
18 er on a part-time, full-time, or contract basis) to
19 process applications under paragraph (3) of section
20 230(c) of the Communications Act of 1934 (47
21 U.S.C. 230(c)), as added by section 2(a).

22 (2) APPLICATIONS PROCESSES.—To establish
23 processes to certify covered companies under para-
24 graph (3) of such section 230(c) of the Communica-

1 tions Act of 1934 (including setting rates for appli-
2 cation fees and setting application deadlines).

3 (b) RULEMAKING AUTHORITY.—Not later than 180
4 days after the date of enactment of this Act, the Commis-
5 sion shall promulgate regulations, in accordance with sec-
6 tion 553 of title 5, United States Code, to carry out this
7 section and the amendments made by section 2(a).

8 (c) REPORTS.—Not later than 5 years after the date
9 of enactment of this Act, and every 5 years thereafter,
10 the Commission shall submit a report to Congress on
11 whether the ability of interactive computer services (as
12 such term is defined in section 230(f) of the Communica-
13 tions Act of 1934 (47 U.S.C. 230(f))) to moderate content
14 provided by other information content providers is such
15 that the protection provided by section 230(e) of such Act
16 is no longer necessary or should be modified.

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