

117TH CONGRESS
1ST SESSION

H. R. 3451

To require covered platforms to provide information about their advertising to academic researchers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2021

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

A BILL

To require covered platforms to provide information about their advertising to academic researchers, 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 “Social Media Dislo-
5 sure And Transparency of Advertisements Act of 2021”
6 or the “Social Media DATA Act”.

7 **SEC. 2. REQUIREMENT.**

8 (a) IN GENERAL.—Not later than 180 days after the
9 date of the enactment of this Act, and every 3 years there-
10 after as needed, the Commission shall, in accordance with

1 section 553 of title 5, United States Code, issue regula-
2 tions that require the following:

3 (1) A covered platform to maintain, and grant
4 academic researchers and the Commission access to,
5 an ad library that contains in a searchable, machine-
6 readable format and that is collected by the covered
7 platform in the ordinary course of business the fol-
8 lowing information (which may be updated by the
9 Commission as the Commission determines to be
10 necessary) related to any advertiser that purchases
11 \$500 or more of advertising in a calender year:

12 (A) The legal name and unique identifica-
13 tion number for each advertiser.

14 (B) A digital copy of the ad content.

15 (C) The method used, as selected either by
16 the advertiser or by the covered platform, to
17 target an ad to platform users, including
18 uploaded lists of platform users, pre-set cat-
19 egories of platform users, key words, and con-
20 textual information.

21 (D) The optimization objective chosen by
22 the advertiser (such as awareness, reach, traf-
23 fic, and engagement).

24 (E) A description of the targeted audience
25 for each advertisement, including information

1 (that may have been collected from the profile
2 of a user or based on an algorithm) on the de-
3 mographics of the audience (including age, gen-
4 der, geographic location, race, ethnicity, and po-
5 litical affiliation), interests of the audience, and
6 any other description of the targeted audience
7 determined to be reasonable by the Commission.

8 (F) A description of the audience of the
9 advertisement determined by a count of adver-
10 tiser viewership, including information (that
11 may have been collected from the profile of a
12 user or based on an algorithm) on the demo-
13 graphics of the audience (including age, gender,
14 geographic location, race, ethnicity, and polit-
15 ical affiliation), interests of the audience, and
16 any other description of the targeted audience
17 determined to be reasonable by the Commission.

18 (G) The number of views generated from
19 the advertisement.

20 (H) Ad conversion (including how often an
21 ad was shared, liked, or clicked-through).

22 (I) The date and time that the advertise-
23 ment was first displayed and last displayed.

24 (J) The amount an advertiser budgeted for
25 the purchase of the advertisement on the plat-

1 form and the amount paid for the purchase of
2 the advertisement on the platform.

3 (K) The category of an ad as defined by
4 the covered platform (such as politics, employ-
5 ment opportunity, housing opportunity, or ap-
6 parel).

7 (L) Each language contained within the
8 ad.

9 (M) Each advertising policy of the covered
10 platform that is made available to advertising
11 customers on the covered platform.

12 (2) The Commission to use the information in
13 the ad library for law enforcement and studies unre-
14 lated to this Act.

15 (3) The methodology to calculate the demo-
16 graphics of the targeted audience described in para-
17 graph (1)(E) to be the same method as the demo-
18 graphics calculated for the delivery audience de-
19 scribed in paragraph (1)(F).

20 (4) Guidelines for the treatment of advertise-
21 ments that are deleted by the advertiser or blocked
22 by the terms of service of the covered platform.

23 (5) Guidelines for the time allotted between
24 when an ad is posted on a covered platform and

1 when the information about the ad needs to be made
2 available in the ad library.

3 (6) Guidelines for how long an ad is required
4 to remain available in the ad library.

5 (b) ENFORCEMENT.—

6 (1) ENFORCEMENT BY THE FEDERAL TRADE
7 COMMISSION.—

8 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-
9 TICES.—A violation of subsection (a) shall be
10 treated as a violation of a regulation under sec-
11 tion 18(a)(1)(B) of the Federal Trade Commis-
12 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding
13 unfair or deceptive acts or practices.

14 (B) POWERS OF COMMISSION.—The Com-
15 mission shall enforce subsection (a) in the same
16 manner, by the same means, and with the same
17 jurisdiction, powers, and duties as though all
18 applicable terms and provisions of the Federal
19 Trade Commission Act (15 U.S.C. 41 et seq.)
20 were incorporated into and made a part of this
21 Act. Any person who violates such subsection
22 shall be subject to the penalties and entitled to
23 the privileges and immunities provided in the
24 Federal Trade Commission Act.

1 (2) EFFECT ON OTHER LAWS.—Nothing in this
2 section shall be construed in any way to limit the
3 authority of the Commission under any other provi-
4 sion of law or to limit the application of any Federal
5 or State law.

6 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
7 ERAL.—

8 (A) IN GENERAL.—If the chief law en-
9 forcement officer of a State, or an official or
10 agency designated by a State, has reason to be-
11 lieve that any person has violated or is violating
12 subsection (a), the attorney general, official, or
13 agency of the State, in addition to any author-
14 ity it may have to bring an action in State
15 court under its consumer protection law, may
16 bring a civil action in any appropriate United
17 States district court or in any other court of
18 competent jurisdiction, including a State court,
19 to—

20 (i) enjoin further such violation by
21 such person;

22 (ii) enforce compliance with such sub-
23 section;

24 (iii) obtain civil penalties; and

1 (iv) obtain damages, restitution, or
2 other compensation on behalf of residents
3 of the State.

4 (B) NOTICE AND INTERVENTION BY THE
5 FEDERAL TRADE COMMISSION.—The attorney
6 general of a State shall provide prior written
7 notice of any action under subparagraph (A) to
8 the Commission and provide the Commission
9 with a copy of the complaint in the action, ex-
10 cept in any case in which such prior notice is
11 not feasible, in which case the attorney general
12 shall serve such notice immediately upon insti-
13 tuting such action. The Commission shall have
14 the right—

- 15 (i) to intervene in the action;
16 (ii) upon so intervening, to be heard
17 on all matters arising therein; and
18 (iii) to file petitions for appeal.

19 (C) LIMITATION ON STATE ACTION WHILE
20 FEDERAL ACTION IS PENDING.—If the Commis-
21 sion has instituted a civil action for violation of
22 this section, no State attorney general, or offi-
23 cial or agency of a State, may bring an action
24 under this paragraph during the pendency of
25 that action against any defendant named in the

1 complaint of the Commission for any violation
2 of this section alleged in the complaint.

3 (c) WORKING GROUP FOR SOCIAL MEDIA RESEARCH
4 ACCESS.—

5 (1) EMPLOYMENT AUTHORITY.—Not later than
6 60 days after the date of the enactment of this Act,
7 the Commission shall hire 2 or 3 employees who are
8 privacy and technology experts to lead a series of
9 stakeholder engagements, including round tables,
10 public workshops, and open comment periods. Stake-
11 holders may include social media researchers, infor-
12 mation science researchers, privacy and civil rights
13 advocates, technologists, representatives from social
14 media companies, representatives from standards or-
15 ganizations, and representatives from international
16 data governance bodies.

17 (2) ESTABLISHMENT OF WORKING GROUP.—
18 Not later than 30 days after the date on which the
19 employees described in paragraph (1) are hired, the
20 Commission shall establish a working group for so-
21 cial media research access (in this subsection the
22 “working group”) composed of the stakeholders de-
23 scribed in paragraph (1).

24 (3) NO COMPENSATION FOR MEMBERS.—A
25 member of the working group shall serve without

1 compensation in addition to any compensation re-
2 ceived for the service of the member as an officer or
3 employee of the United States, if applicable.

4 (4) REPORTS REQUIRED.—

5 (A) BEST PRACTICES AND CODE OF CON-
6 DUCT.—Not later than 1 year after the date on
7 which the working group is established pursu-
8 ant to paragraph (2), the Commission, in con-
9 sultation with the working group, shall make
10 available to the public on the website of the
11 Commission a report containing—

12 (i) a description of the best practices
13 regarding what type of information from
14 an interactive computer service should be
15 made available, and under what cir-
16 cumstances, to academic researchers; and

17 (ii) a recommended code of conduct
18 for academic researchers working with
19 such information.

20 (B) POLICY RECOMMENDATIONS.—Not
21 later than 1 year after the date on which the
22 working group is established pursuant to para-
23 graph (2), the working group shall submit to
24 Congress a report with recommendations for

1 policy changes, which may include any of the
2 following:

3 (i) The types of information that
4 should be made available to academic re-
5 searchers and under what circumstances
6 interactive computer services should be re-
7 quired to grant access to academic re-
8 searchers.

9 (ii) Circumstances in which additional
10 legal protections for interactive computer
11 services may be needed related to the shar-
12 ing of data with researchers.

13 (iii) Recommendation for penalties for
14 academic researchers who misuse or seek
15 to inappropriately reidentify information
16 provided to them by interactive computer
17 services for research purposes.

18 (C) REQUIREMENTS FOR REPORTS.—In
19 preparing the reports described under subpara-
20 graph (A) and (B), the working group may con-
21 sider the following:

22 (i) The type of information consid-
23 ered, including the following:

24 (I) Information related to content
25 moderation decisions including choices

1 related to the ranking, ordering, pro-
2 motion, recommendation of content,
3 and requests for content removals.

4 (II) Information related to en-
5 gagement (such as sharing and likes)
6 with public links (such as news arti-
7 cles and video clips), including the de-
8 mographic breakdown of users that
9 interact with content.

10 (III) Information related to expo-
11 sure (viewership or impressions) with
12 public links (such as news articles and
13 video clips), including the demo-
14 graphic breakdown of users that inter-
15 act with content.

16 (IV) Classification of public in-
17 formation sources (such as opinion
18 and journalism).

19 (V) Archives of formerly public
20 accounts that were removed, including
21 any special treatment of accounts that
22 previously belonged to high-profile in-
23 dividuals.

24 (VI) Archives of fake or bot ac-
25 counts that have been removed.

1 (VII) Archives of coordinated in-
2 fluence operation accounts that have
3 been removed.

4 (VIII) Research conducted by an
5 interactive computer service internally
6 related to the online behavior of a
7 user including A/B studies and other
8 internal research, including studies on
9 interventions to slow spread of misin-
10 formation and disinformation, and to
11 increase user deliberation, including
12 warning labels, limits on sharing and
13 posting, time delay on sharing and
14 posting, and prompts to confirm.

15 (IX) The most popular content
16 on a platform.

17 (ii) Storage of information and treat-
18 ment for each type of information consid-
19 ered, including the following:

20 (I) Limits on time and amount of
21 information stored broken down by
22 the type of information.

23 (II) Under what circumstances
24 privacy preserving techniques such as

1 differential privacy and statistical
2 noise could be used.

3 (III) Required level of aggrega-
4 tion for demographic information.

5 (IV) Standardized variable names
6 across platforms for specific types of
7 information.

8 (V) Under what circumstances
9 erasure policies (related to who and
10 how an individual can request to be
11 removed from a dataset) may be need-
12 ed, specifically for individuals who are
13 less than 18 years old.

14 (VI) Adherence to data security
15 best practices.

16 (iii) A consideration of access for each
17 type of information considered, including
18 the following:

19 (I) Designation of secure facili-
20 ties and computers to analyze infor-
21 mation.

22 (II) Set criteria for researcher
23 access.

1 (III) Any limit on the type of re-
2 search that specific datasets can be
3 used for.

4 (iv) An analysis of how any of the rec-
5 ommendations might interact with inter-
6 national law and jurisdiction.

7 (v) Policies for assuring that open
8 science principles of reproducibility of re-
9 sults and replication of analyses can be re-
10 spected.

11 (vi) Recommendations for the size and
12 type of interactive computer service, which
13 may vary.

14 (5) INAPPLICABILITY OF FACa.—The Federal
15 Advisory Committee Act (5 U.S.C. App.) does not
16 apply to the working group.

17 (d) DEFINITIONS.—In this section:

18 (1) ACADEMIC RESEARCHER.—

19 (A) IN GENERAL.—The term “academic
20 researcher” means an individual that conducts
21 research—

22 (i) in collaboration with an institution
23 of higher education (as defined in section
24 101(a) of the Higher Education Act of
25 1965 (20 U.S.C. 1001(a))); and

1 (ii) that is not for commercial pur-
2 poses.

3 (B) DEFINITION BY COMMISSION.—The
4 Commission may update this definition as the
5 Commission determines to be necessary.

6 (2) COMMISSION.—The term “Commission”
7 means the Federal Trade Commission.

8 (3) COVERED PLATFORM.—

9 (A) IN GENERAL.—The term “covered
10 platform” means any website, desktop applica-
11 tion, or mobile application that is consumer-fac-
12 ing, sells digital advertising space, and has
13 more than 100,000,000 monthly active users
14 for a majority of months during the preceding
15 12 months. The Commission may update this
16 definition as the Commission determines to be
17 necessary.

18 (B) DEFINITION BY COMMISSION.—The
19 Commission may update this definition as the
20 Commission determines to be necessary.

21 (4) INTERACTIVE COMPUTER SERVICE.—The
22 term “interactive computer service” has the meaning
23 given that term in section 230(f) of the Communica-
24 tions Act of 1934 (47 U.S.C. 230(f)).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—To assist
2 the Commission in carrying out this Act, there is author-
3 ized to be appropriated and to remain available until ex-
4 pended—

5 (1) for fiscal year 2022, \$2,000,000; and

6 (2) for fiscal year 2023, \$2,000,000.

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