

117TH CONGRESS  
1ST SESSION

# S. 2228

To amend section 230 of the Communications Act of 1934 to correct shortcomings in how that section addresses content moderation, content creation and development, and content distribution.

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## IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

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

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## A BILL

To amend section 230 of the Communications Act of 1934 to correct shortcomings in how that section addresses content moderation, content creation and development, and content distribution.

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 “Disincentivizing Inter-  
5 net Service Censorship of Online Users and Restrictions  
6 on Speech and Expression Act” or the “DISCOURSE  
7 Act”.

1 **SEC. 2. CONTENT MODERATION, CREATION AND DEVELOP-**  
2 **MENT, AND DISTRIBUTION.**

3 (a) TREATMENT AS PUBLISHER OR SPEAKER CON-  
4 TINGENT ON CONTENT MANAGEMENT PRACTICES.—Sec-  
5 tion 230 of the Communications Act of 1934 (47 U.S.C.  
6 230) is amended—

7 (1) in subsection (c)(1)—

8 (A) by striking “No provider” and insert-  
9 ing the following:

10 “(A) IN GENERAL.—Subject to subpara-  
11 graph (B), no provider”; and

12 (B) by adding at the end the following:

13 “(B) NOTIFICATION OF PARENTAL CON-  
14 TROL PROTECTIONS.—Subparagraph (A) shall  
15 not apply to a provider of an interactive com-  
16 puter service with a dominant market share  
17 that violates subsection (d).”; and

18 (2) in subsection (f)—

19 (A) in paragraph (3)—

20 (i) by striking “The term” and insert-  
21 ing the following:

22 “(A) IN GENERAL.—The term”; and

23 (ii) by adding at the end the fol-  
24 lowing:

1           “(B) CONTENT MODERATION.—If an inter-  
2           active computer service provider with a domi-  
3           nant market share—

4                   “(i) engages in a content moderation  
5                   activity that reasonably appears to express,  
6                   promote, or suppress a discernible view-  
7                   point for a reason that is not protected  
8                   from liability under subsection (c)(2), in-  
9                   cluding reducing or eliminating the ability  
10                  of an information content provider to earn  
11                  revenue, with respect to any information,  
12                  the interactive computer service provider  
13                  shall be deemed to be an information con-  
14                  tent provider with respect to that informa-  
15                  tion; or

16                   “(ii) engages in a pattern or practice  
17                   of content moderation activity that reason-  
18                   ably appears to express, promote, or sup-  
19                   press a discernible viewpoint for a reason  
20                   that is not protected from liability under  
21                   subsection (c)(2), including reducing or  
22                   eliminating the ability of an information  
23                   content provider to earn revenue, the inter-  
24                   active computer service provider shall be  
25                   deemed to be an information content pro-

1 vider with respect to all information that is  
2 provided through the interactive computer  
3 service.

4 “(C) USE OF TARGETED ALGORITHMIC AM-  
5 PLIFICATION.—

6 “(i) IN GENERAL.—If an interactive  
7 computer service provider with a dominant  
8 market share—

9 “(I) amplifies information pro-  
10 vided by an information content pro-  
11 vider by using an algorithm or other  
12 automated computer process to target  
13 the information directly to users with-  
14 out the request of a sending or receiv-  
15 ing user, the interactive computer  
16 service provider shall be deemed to be  
17 an information content provider with  
18 respect to that information; or

19 “(II) engages in a pattern or  
20 practice of amplifying information  
21 provided by an information content  
22 provider by using an algorithm or  
23 other automated computer process to  
24 target the information directly to  
25 users without the request of a sending

1 or receiving user, the interactive com-  
2 puter service provider shall be deemed  
3 to be an information content provider  
4 with respect to all information that is  
5 provided through the interactive com-  
6 puter service.

7 “(ii) EXCEPTIONS.—Clause (i) shall  
8 not apply to the use of an algorithm or  
9 other computer process to—

10 “(I) amplify or target directly to  
11 a user any information that is the re-  
12 sult of a search function performed by  
13 the user; or

14 “(II) sort data chronologically or  
15 alphabetically.

16 “(D) INFORMATION CREATION OR DEVEL-  
17 OPMENT.—If an interactive computer service  
18 provider with a dominant market share—

19 “(i) solicits, comments upon, funds, or  
20 affirmatively and substantively contributes  
21 to, modifies, or alters information provided  
22 by an information content provider, the  
23 interactive computer service provider shall  
24 be deemed to be an information content

1 provider with respect to that information;  
2 or

3 “(ii) engages in a pattern or practice  
4 of soliciting, commenting upon, funding, or  
5 affirmatively and substantively contrib-  
6 uting to, modifying, or altering information  
7 provided by an information content pro-  
8 vider, the interactive computer service pro-  
9 vider shall be deemed to be an information  
10 content provider with respect to all infor-  
11 mation that is provided through the inter-  
12 active computer service.”; and

13 (B) by adding at the end the following:

14 “(5) CONTENT MODERATION ACTIVITY.—The  
15 term ‘content moderation activity’ means editing, de-  
16 leting, throttling, limiting the reach of, reducing or  
17 eliminating the ability of an information content pro-  
18 vider to earn revenue from, or commenting upon, in-  
19 formation provided by an information content pro-  
20 vider, or terminating or limiting an account or  
21 usership, if the activity is based on content-based  
22 criteria.

23 “(6) PATTERN OR PRACTICE.—The term ‘pat-  
24 tern or practice’ means any formal or informal pol-  
25 icy or rule, whether created by a human or gen-

1 erated by a computer, as applied or used by an  
2 interactive computer service provider.”.

3 (b) CLARIFYING CATEGORIES OF OBJECTIONABLE  
4 MATERIAL.—Section 230(c)(2) of the Communications  
5 Act of 1934 (47 U.S.C. 230(c)(2)) is amended—

6 (1) in subparagraph (A)—

7 (A) by striking “considers to be” and in-  
8 serting “has an objectively reasonable belief is”;

9 (B) by inserting “promoting terrorism or  
10 violent extremism,” after “violent,”; and

11 (C) by striking “or otherwise objection-  
12 able” and inserting “promoting self-harm, or  
13 unlawful”; and

14 (2) in subparagraph (B), by striking “para-  
15 graph (1)” and inserting “subparagraph (A)”.

16 (c) RELIGIOUS LIBERTY EXCEPTION TO CIVIL LI-  
17 ABILITY PROTECTIONS.—Section 230(c)(2) of the Com-  
18 munications Act of 1934 (47 U.S.C. 230(c)(2)), as amend-  
19 ed by subsection (b), is amended—

20 (1) by redesignating subparagraphs (A) and  
21 (B) as clauses (i) and (ii), respectively, and adjust-  
22 ing the margins accordingly;

23 (2) by striking “No provider” and inserting the  
24 following:

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), no provider”;

3           (3) in subparagraph (A)(ii), as so designated,  
4           by striking “subparagraph (A)” and inserting  
5           “clause (i)”; and

6           (4) by adding at the end the following:

7           “(B) RELIGIOUS LIBERTY EXCEPTION.—  
8           Subparagraph (A) shall not apply to any action  
9           taken with respect to religious material in a  
10          manner that burdens the exercise of religion, as  
11          defined in section 5 of the Religious Freedom  
12          Restoration Act of 1993 (42 U.S.C. 2000bb  
13          –2).”.

14          (d) DISCLOSURE OF CONTENT MANAGEMENT MECH-  
15          ANISMS AND PRACTICES.—Section 230(d) of the Commu-  
16          nications Act of 1934 (47 U.S.C. 230(d)) is amended—

17               (1) by striking “A provider” and inserting the  
18               following:

19               “(1) PARENTAL CONTROL PROTECTIONS.—A  
20               provider”; and

21               (2) by adding at the end the following:

22               “(2) DISCLOSURE OF CONTENT MANAGEMENT  
23               MECHANISMS AND PRACTICES.—

24               “(A) IN GENERAL.—A provider of an  
25               interactive computer service that provides the



1 service through a mass-market offering to the  
2 public shall publicly disclose accurate informa-  
3 tion regarding the content moderation activity  
4 of the service, including editing, deleting, throt-  
5 tling, limiting the reach of, reducing or elimi-  
6 nating the ability of an information content  
7 provider to earn revenue from, or commenting  
8 upon, information provided by an information  
9 content provider, terminating or limiting an ac-  
10 count or usership, and any other content mod-  
11 eration, promotion, and other curation prac-  
12 tices, sufficient to enable—

13 “(i) consumers to make informed  
14 choices regarding the purchase and use of  
15 the service; and

16 “(ii) entrepreneurs and other small  
17 businesses to develop, market, and main-  
18 tain offerings by means of the service.

19 “(B) MANNER OF DISCLOSURE.—A pro-  
20 vider of an interactive computer service shall  
21 make the disclosure under subparagraph (A)—

22 “(i) through a publicly available, eas-  
23 ily accessible website; or

24 “(ii) by submitting the information  
25 described in that subparagraph to the

1 Commission, which shall make the infor-  
2 mation available to the public through the  
3 website of the Commission.”.

4 (e) CLARIFYING THAT IMMUNITY IS AN AFFIRMA-  
5 TIVE DEFENSE.—Section 230(c)(1) of the Communica-  
6 tions Act of 1934 (47 U.S.C. 230(c)(1)), as amended by  
7 subsection (a)(1), is amended—

8 (1) in subparagraph (A), as so designated, by  
9 striking “subparagraph (B)” and inserting “sub-  
10 paragraphs (B) and (C)”; and

11 (2) by adding at the end the following:

12 “(C) AFFIRMATIVE DEFENSE.—In a crimi-  
13 nal or civil action against a provider or user of  
14 an interactive computer service that treats the  
15 provider or user as the publisher or speaker of  
16 any information, the provider or user shall bear  
17 the burden of proving that the provider or user  
18 is not an information content provider with re-  
19 spect to that information for purposes of sub-  
20 paragraph (A).”.

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