IN THE SENATE OF THE UNITED STATES

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on ________________

A BILL

To preserve access to lawful content and prevent discrimination and unfair methods of competition on the internet, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Promoting Rights and Online Speech Protections to Ensure Every Consumer is Heard Act” or the “PRO-SPEECH Act”.

SEC. 2. PRESERVING ACCESS TO LAWFUL CONTENT.

(a) In General.—Subject to subsection (b), an internet platform may not engage in a practice that does any of the following:
(1) Blocks or otherwise prevents a user or entity from accessing any lawful content, application, service, or device that does not interfere with the internet platform’s functionality or pose a data privacy or data security risk to a user.

(2) Degrades or impairs the access of a user or entity to lawful internet traffic on the basis of content, application, service, or use of a device that does not interfere with the internet platform’s functionality or pose a data privacy or data security risk to a user.

(b) EXCEPTIONS.—

(1) SMALL INTERNET PLATFORMS.—The prohibitions under subsection (a) shall not apply to a small internet platform unless—

(A) the Commission determines that the benefits of expanding the application of such prohibitions to 1 or more small internet platforms outweigh the costs; and

(B) the Director of the Office of Management and Budget approves such cost-benefit analysis and publishes such approval in the Federal Register.

(2) PUBLISHERS OF CONTENT, APPLICATIONS, AND SERVICES.—The prohibitions under subsection
(a) shall not apply to the extent that an internet
platform publicly proclaims to be a publisher, insofar
as the internet platform is acting as a publisher, of
any particular content, application, or service.

SEC. 3. NONDISCRIMINATION.

An internet platform may not take any action against
a user or entity based on racial, sexual, religious, political
affiliation, or ethnic grounds.

SEC. 4. PROHIBITIONS ON UNFAIR METHODS OF COMPETI-
TION.

(a) IN GENERAL.—An internet platform may not en-
gage in an unfair method of competition against any other
internet platform (as determined by the Commission
et seq.)).

(b) PRESUMED UNFAIR METHODS OF COMPETI-
TION.—For purposes of subsection (a), the following ac-
tions shall be presumed to be an unfair method of competi-
tion:

(1) BLOCKING OR PROHIBITING USE.—Any ac-
tion taken by a large internet platform that wholly
blocks or prohibits an internet platform that com-
petes with the large internet platform (or any affili-
ate of the large internet platform) from making use
of the large internet platform.
(2) UNREASONABLE DISCRIMINATION.—Any action taken by a large internet platform that unreasonably discriminates against an internet platform that competes with the large internet platform (or any affiliate of the large internet platform).

(c) DETERMINATION OF UNFAIR METHODS OF COMPETITION.—The Commission may determine that an action taken by a large internet platform is presumed to be an unfair method of competition if—

(1) the Commission establishes that—

(A) such action by a large internet platform—

(i) is anti-competitive and likely to reduce competition, reduce quality of service, or decrease innovation; and

(ii) is not likely to be remedied without government intervention; and

(B) the benefits of such a determination outweigh the costs; and

(2) the Director of the Office of Management and Budget approves such cost-benefit analysis and publishes such approval in the Federal Register.

SEC. 5. TRANSPARENCY.

(a) REQUIRED DISCLOSURES.—
(1) IN GENERAL.—Subject to subsection (b), an internet platform shall disclose, on a publicly available and easily accessible website, accurate information regarding the platform management practices, performance characteristics, and commercial terms of service of its app store, cloud computing service, operating system, search engine, or social media network sufficient to enable a reasonable user to make an informed choice regarding the purchase or use of such service and to develop, market, and maintain a product or service on the internet platform.

(2) REQUIRED INFORMATION.—The information to be disclosed pursuant to paragraph (1) shall include the following:

(A) PLATFORM MANAGEMENT PRACTICES.—Information regarding the platform management practices of an internet platform shall include the following:

(i) GENERAL PRACTICES.—A description of any content management or data management practices.

(ii) APP STORE, OPERATING SYSTEM, SEARCH ENGINE, OR SOCIAL MEDIA NETWORK.—With respect to an app store, operating system, search engine, or social
media network, a description of any practice—

(I) regarding how the internet platform—

(aa) curates and targets content to users;

(bb) promotes content, services, or products, including its own content, services, or products;

(cc) moderates content; or

(dd) determines whether to
demonetize a user’s use of the internet platform by any means;

or

(II) that directly or indirectly favors certain data or content over other data or content, including through use of techniques such as content placement or prioritization—

(aa) to benefit an affiliate;

or

(bb) in exchange for consideration, monetary or otherwise.
(iii) CLOUD COMPUTING SERVICE.——

With respect to a cloud computing service, a description of any practice—

(I) regarding congestion management, application-specific behavior, device attachment, or data privacy and data security; or

(II) that determines whether—

(aa) any content, application, or service is lawful; and

(bb) a device interferes with the cloud computing service’s functionality or poses an unreasonable data privacy or data security risk to a user.

(iv) PUBLISHERS.—

(I) INTERNET PLATFORMS.——

With respect to an internet platform that publicly proclaims to be a publisher, a description of any practice that blocks or otherwise prevents a user or entity from accessing any lawful content, application, service, or device that does not interfere with the internet platform’s functionality or
pose a risk of data privacy or data security to a user.

(II) AFFILIATES.—With respect to an internet platform that publicly proclaims to be a publisher and is an affiliate of a cloud computing service or operating system, a description of any practice that degrades or impairs a user or entity’s access to lawful internet traffic on the basis of content, application, service, or use of a device that does not interfere with the internet platform’s functionality or pose a risk to the data privacy or data security of a user.

(B) PERFORMANCE CHARACTERISTICS.—Information regarding the performance characteristics of an internet platform shall include the following:

(i) GENERAL CHARACTERISTICS.—A general description of the service, including the service technology.

(ii) CLOUD COMPUTING SERVICE.—With respect to a cloud computing service, a description of—
(I) the expected and actual access speed and latency; and

(II) the capability of the service to support real-time applications.

(iii) SERVICE WITH REQUIRED APPROVAL.—With respect to an app store, cloud computing service, or operating system that requires approval before allowing an application to use the internet platform—

(I) the average time for a developer to receive such approval after initial submission; and

(II) the timeline for the internet platform to resolve complaints and the outcome of any such resolution.

(C) COMMERCIAL TERMS.—Information regarding the commercial terms of an internet platform shall include a description of the fee disclosures, privacy practices, and redress options for users, including the following:

(i) USAGE-BASED FEES.—With respect to a cloud computing service, any usage-based fees or fees for early termination or additional network services.
(ii) APPROVAL FEES.—With respect to an app store, cloud computing service, or operating system that requires approval before allowing an application to use the internet platform, any fees charged to those seeking such approval.

(iii) THIRD-PARTY FEES.—With respect to an app store, cloud computing service, or operating system, any fees charged to or by third parties associated with a user’s decision to purchase an application or other content that uses such internet platform.

(iv) PRIORITIZATION FEES.—With respect to an app store, operating system, search engine, or social media network, any fees charged for the placement or prioritization of any content or application.

(v) PRIVACY PRACTICES.—A description of any data privacy practice that entails the inspection of user-generated content or other internet platform information and whether such content or information is stored, provided to third parties, or used for non-platform management purposes.
(vi) Complaint resolution practices.—A description of any practice for resolving the complaint or question of a user.

(b) Applicability to small internet platforms.—The requirements under subsection (a) shall not apply to a small internet platform unless—

(1) the Commission determines that the benefits of expanding the application of such requirements to 1 or more small internet platforms outweigh the costs; and

(2) the Director of the Office of Management and Budget approves such cost-benefit analysis and publishes such approval in the Federal Register.

SEC. 6. ENFORCEMENT.

(a) Enforcement authority.—

(1) Unfair and deceptive acts or practice.—A violation of section 2, 3, or 5 shall be treated as an unfair and deceptive act or practice proscribed under section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)).

(2) Unfair methods of competition.—Any person who violates section 4 shall be liable for engaging in an unfair method of competition under
section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)).

(b) Powers of the Commission.—

(1) In general.—Notwithstanding any other provision of law, 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.

(2) Privileges and immunities.—Notwithstanding any other provision of law, 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 (15 U.S.C. 41 et seq.).

(3) Authority preserved.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.

(c) Complaints to the Commission.—

(1) In general.—Any individual alleging a violation of this Act may submit to the Commission a complaint which briefly states the facts surrounding such violation.
(2) NOTICE TO INTERNET PLATFORM.—Upon receiving a complaint described in paragraph (1), the Commission shall forward a statement of the complaint to the internet platform that is the subject of the alleged violation.

(3) REQUIREMENT TO ADDRESS COMPLAINT.—Upon receiving a forwarded complaint under paragraph (2), the internet platform shall, within a reasonable time (as specified by the Commission), either—

(A) make a reparation for any injury alleged to have been caused in the complaint filed under paragraph (1) and notify the Commission of such reparation; or

(B) submit to the Commission a written response to the complaint.

(4) REPARATION.—If the internet platform makes a reparation under paragraph (3)(A) to the satisfaction of the Commission, the Commission shall relieve the internet platform of liability to the complainant for the particular violation of law thus complained of.

(5) INVESTIGATION.—

(A) IN GENERAL.—If the internet platform does not make a sufficient reparation under
paragraph (3)(A), or if there appears to be any reasonable ground for investigating such complaint, the Commission shall investigate the matters complained of in such manner and by such means as it shall deem proper.

(B) Direct Damage.—No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(C) Investigation Conclusion.—With respect to any investigation conducted pursuant to subparagraph (A), the Commission shall issue an order concluding such investigation not more than 5 months after the date on which the complaint was filed.

SEC. 7. RELATIONSHIP BETWEEN FEDERAL AND STATE LAW.

No State or political subdivision of a State may adopt, maintain, enforce, or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this Act.

SEC. 8. DEFINITIONS.

In this Act:

(1) Affiliate.—The term “affiliate” means a person that directly or indirectly owns or controls, is
owned or controlled by, or is under common ownership or control with, another person.

(2) App Store.—The term “app store” means a digital distribution platform for computer applications that includes at least 1 application from a person unaffiliated with the operator of the digital distribution platform.

(3) Cloud Computing Service.—The term “cloud computing service” means a service offering on-demand network access to a shared pool of configurable computing resources (such as any network, server, storage, application, or service) that generally can be provisioned with minimal management effort or service provider interaction.


(5) Internet Platform.—The term “internet platform” means an entity that owns or operates, either directly or through an affiliate, an app store, a cloud computing service, an operating system, a search engine, or a social media network.

(6) Large Internet Platform.—The term “large internet platform” means an internet platform with equal to or more than—

(A) 100,000,000 global active users; or
16

(B) $500,000,000 in annual revenues, including direct user fees, advertising revenues, or other revenues associated with an app store, a cloud computing service, an operating system, a search engine, or a social media network.

(7) OPERATING SYSTEM.—The term “operating system” means a computer program, implemented in either software or firmware, that acts as an intermediary between users of a computer and the computer hardware, providing an environment in which a user can execute, operate, or otherwise utilize an application.

(8) OWN.—The term “own” means to hold an equity interest (or the equivalent thereof) of more than 10 percent.

(9) SEARCH ENGINE.—The term “search engine” means a technology that enables a user to initiate a search query for particular information using the internet and that is capable of returning at least 1 search result unaffiliated with the owner or operator of the search engine.

(10) SMALL INTERNET PLATFORM.—The term “small internet platform” means an internet platform that has—
(A) fewer than 100,000,000 global active
users; and

(B) less than $500,000,000 in annual reve-

nues, including direct user fees, advertising rev-

enues, or other revenues associated with an app

store, a cloud computing service, an operating

system, a search engine, or a social media net-

work.

(11) SOCIAL MEDIA NETWORK.—

(A) IN GENERAL.—The term “social media

network” means an internet-enabled network

that hosts any information, comment, message,

still image, or moving image posted by a user

to facilitate interpersonal communication be-

tween or among users.

(B) EXCEPTION.—Such term does not in-

clude electronic mail or an online service, appli-

cation, or website for which the hosting of such

information or other content is incidental to the

provision of news, sports, entertainment, or

other information not generated by users.