

119TH CONGRESS
1ST SESSION

S. _____

To require online service providers to disclose their acceptable use policies, provide users with written notice before the termination of a user’s account, and publish an annual report detailing actions taken to enforce their acceptable use policies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself, Mrs. BLACKBURN, Mrs. BRITT, Mr. COTTON, Mr. CRAPO, Ms. LUMMIS, Mr. MARSHALL, Mr. RISCH, and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require online service providers to disclose their acceptable use policies, provide users with written notice before the termination of a user’s account, and publish an annual report detailing actions taken to enforce their acceptable use policies, 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 “Transparency in En-
5 forcement, Restricting, and Monitoring of Services Act”
6 or the “TERMS Act”.

1 SEC. 2. PURPOSE.

2 The purpose of this Act is to ensure that consumers,
3 businesses, and organizations seeking to use the products
4 or services of an online service provider have sufficient in-
5 formation regarding the online service provider’s commer-
6 cial business standards, processes, and policies with re-
7 spect to the unilateral termination, suspension, or can-
8 cellation of user accounts or ability to use the online serv-
9 ice provider’s products or services. Such information al-
10 lows consumers to make informed choices regarding their
11 decision to use or purchase the services or products of an
12 online service provider and promotes a competitive mar-
13 ketplace for such products or services.

14 SEC. 3. DEFINITIONS.

15 In this Act:

16 (1) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (2) NONPROFIT ORGANIZATION.—The term
19 “nonprofit organization” has the meaning given
20 such term in section 201(i) of title 35, United States
21 Code.

22 (3) ONLINE SERVICE PROVIDER.—The term
23 “online service provider”—

24 (A) means the provider of a public-facing
25 website, online service, or online application di-
26 rected to a consumer or organization that—

1 (i) requires any person who wishes to
2 use the website, online service, or online
3 application to create a unique account or
4 profile for such website, service, or applica-
5 tion;

6 (ii) provides an internet-based product
7 or service that is accessible through the
8 website, online service, or online applica-
9 tion; and

10 (iii) is engaged in interstate or foreign
11 commerce; and

12 (B) includes any entity described in sub-
13 paragraph (A), regardless of whether—

14 (i) offering a product or service to the
15 general public is the sole source of income
16 or principal business of such entity; or

17 (ii) the entity earns a profit on a
18 product or service.

19 (4) RESTRICT.—The term “restrict”, with re-
20 spect to a user, means an online service provider’s
21 termination or suspension of a user’s account or pro-
22 file on the online service provider’s website, online
23 service, or online application, or limitation of the
24 user’s access thereto based on a determination that

1 the user violated the online service provider’s accept-
2 able use policy.

3 (5) USER.—The term “user” means, with re-
4 spect to an online service provider, a person who
5 registers an account or creates a profile on the
6 website, online service, or online application of the
7 online service provider.

8 **SEC. 4. DISCLOSURE OF ACCEPTABLE USE POLICIES.**

9 (a) IN GENERAL.—Not later than 180 days after the
10 date of enactment of this Act and subject to subsection
11 (b), an online service provider shall publicly disclose in an
12 easily accessible manner, such as within terms of service
13 available on the online service provider’s website, an ac-
14 ceptable use policy that concisely and accurately describes,
15 in clear language, information regarding the standards,
16 processes, and policies of the online service provider with
17 respect to any decision by the online service provider to
18 restrict a user.

19 (b) REQUIRED INFORMATION.—For purposes of sub-
20 section (a), an online service provider shall include the fol-
21 lowing information in an acceptable use policy:

22 (1) An explanation of what specific acts or
23 practices are prohibited by the online service pro-
24 vider that could lead to a decision by the online serv-
25 ice provider to restrict a user.

1 (2) An explanation of how the online service
2 provider enforces the acceptable use policy, including
3 any third party the online service provider relies
4 upon, in whole or in part, to assist in the enforce-
5 ment of the acceptable use policy by the online serv-
6 ice provider.

7 (3) Either—

8 (A) an explanation of how a user can ap-
9 peal, if applicable, a decision by an online serv-
10 ice provider to restrict a user; or

11 (B) if the online service provider does not
12 permit an appeal or reconsideration of a deci-
13 sion to restrict a user, a statement that such
14 decision is not appealable or subject to recon-
15 sideration.

16 (4) An explanation of whether acts or practices
17 a user commits entirely outside of the website, online
18 service, or online application of the online service
19 provider, such as social media posts, public state-
20 ments, media publications, and third-party re-
21 sources, may be a sufficient basis alone or in com-
22 bination with other information to restrict a user.

23 (5) An explanation of the online service pro-
24 vider's standards, processes, and policies with re-

1 spect to the notice requirement described in section
2 5.

3 (c) CHANGES TO ACCEPTABLE USE POLICIES.—If an
4 online service provider makes a material change to its ac-
5 ceptable use policy that would result in a material change
6 to any information described in subsection (b), the online
7 service provider shall, taking into account available tech-
8 nology, provide advance notice to each user.

9 **SEC. 5. ADVANCE WRITTEN NOTICE PRIOR TO TERMI-**
10 **NATION OR SUSPENSION.**

11 (a) NOTICE REQUIREMENT.—

12 (1) IN GENERAL.—Except as described in sub-
13 section (b), an online service provider shall provide
14 advance written notice to a user in violation of the
15 online service provider's acceptable use policy prior
16 to restricting the user.

17 (2) REQUIRED INFORMATION.—The advance
18 written notice required under paragraph (1) shall in-
19 clude the following information:

20 (A) The specific act or practice of the user
21 that led to the decision to restrict the user.

22 (B) A description of how the act or prac-
23 tice identified in subparagraph (A) violated the
24 acceptable use policy.

1 (C) Whether the user has an option to ap-
2 peal the decision, and, if so, a description of the
3 process for how the user can appeal the online
4 service provider's decision, consistent with the
5 acceptable use policy.

6 (D) A description of the option for the
7 user to elect that the online service provider
8 publicly disclose such written notice as de-
9 scribed in paragraph (4).

10 (3) ADVANCE WRITTEN NOTICE.—

11 (A) IN GENERAL.—For the purposes of
12 this section, an online service provider will be
13 deemed to have provided an advance written no-
14 tice to a user if such provider makes a good
15 faith effort to notify the user not later than 7
16 days prior to restricting the user.

17 (B) GOOD FAITH EFFORT.—For the pur-
18 poses of subparagraph (A), a good faith effort
19 may include—

20 (i) a notification to the most recent
21 email address or other contact information
22 the user provided to the online service pro-
23 vider; or

24 (ii) if the online service provider does
25 not have any contact information for the

1 user, a prominent notice that is displayed
2 to the user on the online service provider's
3 website, service, or application when the
4 user next accesses the user's account or
5 profile on such website, service, or applica-
6 tion.

7 (4) PUBLIC DISCLOSURE.—An online service
8 provider shall—

9 (A) provide to any user issued a written
10 notice under paragraph (1) an option for the
11 online service provider to publicly disclose such
12 notice; and

13 (B) if such user chooses to have such no-
14 tice publicly disclosed, publish such notice on
15 the website of the online service provider.

16 (b) EXCEPTIONS FOR COURT ACTION OR IMMINENT
17 RISK OF HARM.—An online service provider may restrict
18 a user without advance written notice if—

19 (1) such restriction was done to—

20 (A) comply with a lawful order of a court
21 of competent jurisdiction;

22 (B) comply with Federal law; or

23 (C) protect against an imminent risk of—

24 (i) death;

25 (ii) a serious physical injury; or

1 (iii) a serious health risk; and

2 (2) the online service provider provides the user
3 the information required by subsection (a)(2) and
4 publicly discloses the written notice at the same time
5 that the provider restricts the user or as soon as
6 practicable thereafter.

7 (c) **EFFECTIVE DATE.**—The requirements of this sec-
8 tion shall take effect on the date that is 180 days after
9 the date of enactment of this Act.

10 **SEC. 6. REPORTING REQUIREMENTS.**

11 (a) **ANNUAL REPORT.**—Not later than 1 year after
12 the date of enactment of this Act and annually thereafter
13 on a date to be determined by each online service provider,
14 an online service provider shall publish, with an open li-
15 cense, in both a format easily read by humans and a ma-
16 chine-readable format, in a location on its public website
17 that is easily accessible to users and visitors of such
18 website, and consistent with the requirements described
19 in subsections (b) and (c), a report detailing actions taken
20 to enforce the online service provider’s acceptable use pol-
21 icy.

22 (b) **REPORT REQUIREMENTS.**—The report required
23 under subsection (a) shall include the following informa-
24 tion with respect to the applicable reporting period:

1 (1) The total number of instances in which the
2 online service provider was alerted of a potential vio-
3 lation of the acceptable use policy by—

4 (A) a user complaint;

5 (B) an employee of, or a person con-
6 tracting with, the online service provider;

7 (C) an internal automated detection tool of
8 the online service provider;

9 (D) a government entity, including the spe-
10 cific office or entity that alerted the online serv-
11 ice provider;

12 (E) a nonprofit organization; or

13 (F) any other person.

14 (2) Subject to subsection (c), the number of in-
15 stances in which the online service provider took
16 steps to restrict a user, including the number of in-
17 stances in which the online service provider—

18 (A) terminated a user's account or profile
19 on the online service provider's website, online
20 service, or online application or otherwise per-
21 manently limited access to or use of the product
22 or service of the online service provider;

23 (B) suspended a user's account or profile
24 on the online service provider's website, online
25 service, or online application;

1 (C) limited a user's access to the online
2 service provider's website, online service, or on-
3 line application; or

4 (D) took any other action, such as issuing
5 a warning, in response to a violation of the ac-
6 ceptable use policy.

7 (3) The number of instances in which a user
8 appealed the online service provider's decision.

9 (4) The number of appeals that resulted in a
10 reversal of the online service provider's decision.

11 (c) CATEGORIZATION OF ACTIONS TAKEN.—The in-
12 formation described in subsection (b)(2) shall be cat-
13 egorized by—

14 (1) the exact provision of the acceptable use
15 policy that was violated by a user; and

16 (2) the source of the alert of the potential viola-
17 tion of the acceptable use policy as described in sub-
18 section (b)(1).

19 **SEC. 7. ENFORCEMENT.**

20 (a) ENFORCEMENT BY THE COMMISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this Act shall be treated as
23 a violation of a rule defining an unfair or deceptive
24 act or practice under section 18(a)(1)(B) of the Fed-

1 eral Trade Commission Act (15 U.S.C.
2 57a(a)(1)(B)).

3 (2) POWERS OF THE COMMISSION.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (C), the Commission shall enforce
6 this Act in the same manner, by the same
7 means, and with the same jurisdiction, powers,
8 and duties as though all applicable terms and
9 provisions of the Federal Trade Commission
10 Act (15 U.S.C. 41 et seq.) were incorporated
11 into and made a part of this Act.

12 (B) PRIVILEGES AND IMMUNITIES.—Ex-
13 cept as provided in subparagraph (C), any on-
14 line service provider who violates this Act or a
15 regulation promulgated under this Act shall be
16 subject to the penalties and entitled to the
17 privileges and immunities provided in the Fed-
18 eral Trade Commission Act (15 U.S.C. 41 et
19 seq.).

20 (C) NONPROFIT ORGANIZATIONS.—Not-
21 withstanding section 4, 5(a)(2), or 6 of the
22 Federal Trade Commission Act (15 U.S.C. 44,
23 45(a)(2), 46) or any jurisdictional limitation of
24 the Commission, the Commission shall also en-
25 force this Act, in the same manner provided in

1 subparagraphs (A) and (B), with respect to or-
2 ganizations not organized to carry on business
3 for their own profit or that of their members.

4 (D) AUTHORITY PRESERVED.—Nothing in
5 this subsection shall be construed to limit the
6 authority of the Commission under any other
7 provision of law.

8 (b) COMMISSION GUIDANCE.—

9 (1) IN GENERAL.—Not later than 180 days
10 after the date of enactment of this Act, the Commis-
11 sion shall issue guidance to assist online service pro-
12 viders in complying with the requirements of this
13 Act, which shall include the provision of best prac-
14 tices and examples.

15 (2) LIMITATION ON GUIDANCE.—No guidance
16 issued by the Commission with respect to this Act
17 shall—

18 (A) confer any rights on any person, State,
19 or locality; or

20 (B) operate to bind the Commission or any
21 person to the approach recommended in such
22 guidance.

23 (3) USE IN ENFORCEMENT ACTIONS.—In any
24 enforcement action brought pursuant to this Act—

25 (A) the Commission—

1 (i) shall allege a specific violation of a
2 provision of this Act; and

3 (ii) may not base such enforcement
4 on, or execute a consent order based on,
5 practices that are alleged to be inconsistent
6 with any guidance issued by the Commis-
7 sion with respect to this Act, unless the
8 practices are alleged to violate a provision
9 of this Act; and

10 (B) a person may use compliance with any
11 such guidance as evidence of compliance with
12 this Act.