

116TH CONGRESS
1ST SESSION

S. _____

To require transparency, accountability, and protections for consumers online.

IN THE SENATE OF THE UNITED STATES

Mr. SCHATZ (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require transparency, accountability, and protections for consumers online.

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 “Platform Account-
5 ability and Consumer Transparency Act” or the “PACT
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSION.—Except as otherwise pro-
10 vided, the term “Commission” means the Federal
11 Trade Commission.

1 (2) DEMONETIZE.—The term “demonetize”,
2 with respect to content on an interactive computer
3 service, means to take action to prohibit the infor-
4 mation content provider that generated or dissemi-
5 nated the content from receiving financial benefit
6 based on the content.

7 (3) DEPRIORITIZE.—The term “deprioritize”,
8 with respect to content on an interactive computer
9 service, means to take action or use certain tech-
10 niques to reduce the priority level of the content in
11 response to potentially policy-violating content.

12 (4) ILLEGAL ACTIVITY.—The term “illegal ac-
13 tivity” means activity conducted by an information
14 content provider that has been determined by a Fed-
15 eral or State court to violate Federal criminal or
16 civil law.

17 (5) ILLEGAL CONTENT.—The term “illegal con-
18 tent” means information provided by an information
19 content provider that has been determined by a Fed-
20 eral or State court to violate—

21 (A) Federal criminal or civil law; or

22 (B) State defamation law.

23 (6) INTERACTIVE COMPUTER SERVICE.—The
24 term “interactive computer service” has the meaning

1 given the term in section 230 of the Communica-
2 tions Act of 1934 (47 U.S.C. 230).

3 (7) INFORMATION CONTENT PROVIDER.—The
4 term “information content provider” has the mean-
5 ing given the term in section 230 of the Communica-
6 tions Act of 1934 (47 U.S.C. 230).

7 (8) POTENTIALLY POLICY-VIOLATING CON-
8 TENT.—The term “potentially policy-violating con-
9 tent” means content that may violate the acceptable
10 use policy of the provider of an interactive computer
11 service.

12 (9) SMALL BUSINESS PROVIDER.—The term
13 “small business provider” means a provider of an
14 interactive computer service that, during the most
15 recent 24-month period—

16 (A) received fewer than 1,000,000 monthly
17 active users or monthly visitors; and

18 (B) accrued revenue of less than
19 \$25,000,000.

20 **SEC. 3. FINDINGS.**

21 Congress finds the following:

22 (1) Technological advancements involving the
23 internet and interactive computer service providers
24 have led to innovations that offer substantial benefit
25 to the people and the economy of the United States.

1 (2) People in the United States increasingly
2 rely on the internet and other interactive computer
3 services to communicate, gather information, and
4 conduct transactions that are central to many as-
5 pects of economic, political, social, and cultural life.

6 (3) The decisions made by providers of inter-
7 active computer services shape the online informa-
8 tion ecosystem available to people in the United
9 States and impact the environment for free expres-
10 sion.

11 (4) The people of the United States benefit
12 from understanding the choices that interactive com-
13 puter service providers make in maintaining their
14 services, including by removing, blocking, amplifying,
15 or otherwise modifying information provided by
16 other users.

17 (5) Online consumers are not adequately pro-
18 tected in the United States because, with the excep-
19 tion of Federal criminal statutes, providers of inter-
20 active computer services are immune from the en-
21 forcement of most Federal statutes and regulations.

22 (6) Federal and State court decisions and Fed-
23 eral statutes and regulations that apply to offline
24 commerce do not always govern online commerce
25 and communications.

1 (7) The rights of consumers should extend to
2 online commerce and communications to provide a
3 level playing field for all consumers and companies,
4 and to prevent wrongdoing and victimization of peo-
5 ple in the United States.

6 **SEC. 4. POLICY.**

7 It is the policy of the United States—

8 (1) to preserve the internet and other inter-
9 active computer services as forums for diversity of
10 political discourse, unique opportunities for cultural
11 development, and myriad avenues for intellectual
12 and commercial activity;

13 (2) to ensure consumers have easily accessible
14 and clear information about the acceptable use poli-
15 cies of interactive computer services to inform con-
16 sumer decisions on participation in, or engagement
17 with, those services through accountability and
18 transparency measures;

19 (3) to encourage the development and use of
20 technologies that minimize illegal activities and con-
21 tent and potentially policy-violating content; and

22 (4) to ensure that the consumer rights of users
23 of interactive computer services are maintained and
24 extended to activities that the users may participate
25 in online.

1 **SEC. 5. TRANSPARENCY AND PROCESS REQUIREMENTS.**

2 (a) ACCEPTABLE USE POLICY.—

3 (1) PUBLICATION OF ACCEPTABLE USE POL-
4 ICY.—A provider of an interactive computer service
5 shall publish an acceptable use policy in accordance
6 with paragraph (2) in a location that is easily acces-
7 sible to the user.

8 (2) CONTENTS OF POLICY.—The acceptable use
9 policy of a provider of an interactive computer serv-
10 ice shall—

11 (A) reasonably inform users about the
12 types of content that are allowed on the inter-
13 active computer service;

14 (B) explain the steps the provider takes to
15 ensure content complies with the acceptable use
16 policy;

17 (C) explain the means by which users can
18 notify the provider of potentially policy-violating
19 content, illegal content, or illegal activity, which
20 shall include—

21 (i) subject to subsection (e), making
22 available a live company representative to
23 take user complaints through a toll-free
24 telephone number during regular business
25 hours for not fewer than 8 hours per day
26 and 5 days per week;

1 (ii) an email address or relevant in-
2 take mechanism to handle user complaints;
3 and

4 (iii) a complaint system described in
5 subsection (b); and

6 (D) include publication of a quarterly
7 transparency report outlining actions taken to
8 enforce the policy, as described in subsection
9 (d).

10 (b) COMPLAINT SYSTEM.—A provider of an inter-
11 active computer service shall provide a system that is eas-
12 ily accessible to a user through which the user may submit
13 a complaint in good faith and track the status of the com-
14 plaint, including a complaint regarding—

15 (1) potentially policy-violating content, illegal
16 content, or illegal activity; or

17 (2) a decision of the interactive computer serv-
18 ice provider to remove content posted by the infor-
19 mation content provider.

20 (c) PROCESSING OF COMPLAINTS.—

21 (1) COMPLAINTS REGARDING ILLEGAL CON-
22 TENT, ILLEGAL ACTIVITY, OR POTENTIALLY POLICY-
23 VIOLATING CONTENT.—

24 (A) ILLEGAL CONTENT OR ILLEGAL ACTIV-
25 ITY.—Subject to subsection (e), if a provider of

1 an interactive computer service receives notice
2 of illegal content or illegal activity on the inter-
3 active computer service that substantially com-
4 plies with the requirements under paragraph
5 (3)(B)(ii) of section 230(e) of the Communica-
6 tions Act of 1934 (47 U.S.C. 230(e)), as added
7 by section 6(a), the provider shall remove the
8 content or stop the activity within 24 hours of
9 receiving that notice, subject to reasonable ex-
10 ceptions based on concerns about the legitimacy
11 of the notice.

12 (B) POTENTIALLY POLICY-VIOLATING CON-
13 TENT.—Subject to subsection (e), if a provider
14 of an interactive computer service receives no-
15 tice of potentially policy-violating content on the
16 interactive computer service, the provider shall,
17 not later than 14 days after receiving that no-
18 tice—

19 (i) review the content;

20 (ii) determine whether the content ad-
21 heres to the acceptable use policy of the
22 provider; and

23 (iii) take appropriate steps based on
24 the determination made under clause (ii).

25 (2) PROCESS AFTER REMOVAL OF CONTENT.—

1 (A) REMOVAL BASED ON USER COM-
2 PLAINT.—

3 (i) IN GENERAL.—Subject to clause
4 (ii), if a provider of an interactive com-
5 puter service removes potentially policy-vio-
6 lating content based on a user complaint,
7 the provider of the interactive computer
8 service shall, concurrently with the re-
9 moval—

10 (I) notify the information content
11 provider and the complainant of the
12 removal and explain why the content
13 was removed;

14 (II) allow the information content
15 provider to appeal the decision; and

16 (III) notify the information con-
17 tent provider and the complainant
18 of—

19 (aa) the determination re-
20 garding the appeal under sub-
21 clause (II); and

22 (bb) in the case of a reversal
23 of the decision to remove the con-
24 tent in question, the reason for
25 the reversal.

1 (ii) EXCEPTIONS.—A provider of an
2 interactive computer service shall not be
3 required to provide an information content
4 provider with notice or an opportunity to
5 appeal under clause (i)—

6 (I) if the provider of the inter-
7 active computer service is unable to
8 contact the information content pro-
9 vider after taking reasonable steps to
10 do so; or

11 (II) if the provider of the inter-
12 active computer service knows that
13 the potentially policy-violating content
14 relates to an ongoing law enforcement
15 investigation.

16 (B) REMOVAL BASED ON MODERATION DE-
17 CISIONS OF INTERACTIVE COMPUTER SERVICE
18 PROVIDER.—If a provider of an interactive com-
19 puter service receives notice, through a com-
20 plaint from the information content provider,
21 that the provider of the interactive computer
22 service removed content of the information con-
23 tent provider that the information content pro-
24 vider believes was not potentially policy-vio-
25 lating content, the provider of the interactive

1 computer service shall, not later than 14 days
2 after receiving notice—

3 (i) review the content;

4 (ii) determine whether the content ad-
5 heres to the acceptable use policy of the
6 provider of the interactive computer serv-
7 ice;

8 (iii) take appropriate steps based on
9 the determination made under clause (ii);
10 and

11 (iv) notify the information content
12 provider regarding the determination made
13 under clause (ii) and steps taken under
14 clause (iii).

15 (d) QUARTERLY TRANSPARENCY REPORT.—

16 (1) IN GENERAL.—Subject to subsection (e), as
17 part of the acceptable use policy required under sub-
18 section (a), a provider of an interactive computer
19 service shall publish a quarterly transparency report
20 in accordance with paragraph (2) of this subsection.

21 (2) REQUIREMENTS.—A provider of an inter-
22 active computer service shall include in the report
23 required under paragraph (1), with respect to the
24 preceding 3-month period—

1 (A) the total number of instances in which
2 illegal content, illegal activity, or potentially
3 policy-violating content was flagged—

4 (i) due to a user complaint; or

5 (ii) internally, by—

6 (I) an employee or contractor of
7 the provider; or

8 (II) an internal automated detec-
9 tion tool;

10 (B) the number of instances in which the
11 interactive computer service provider took ac-
12 tion with respect to illegal content, illegal activ-
13 ity, or known potentially policy-violating content
14 due to its nature as illegal content, illegal activ-
15 ity, or known potentially policy-violating con-
16 tent, including content removal, content demon-
17 etization, content deprioritization, appending
18 content with an assessment, account suspen-
19 sion, account removal, or any other action
20 taken in accordance with the acceptable use pol-
21 icy of the provider, categorized by—

22 (i) the category of rule violated;

23 (ii) the source of the flag, including
24 government, user, internal automated de-
25 tection tool, coordination with other inter-

1 active computer service providers, or per-
2 sonnel employed or contracted for by the
3 provider;

4 (iii) the country of the information
5 content provider; and

6 (iv) coordinated campaign, if applica-
7 ble;

8 (C)(i) the number of instances in which an
9 information content provider appealed the deci-
10 sion to remove potentially policy-violating con-
11 tent; and

12 (ii) the percentage of appeals described in
13 clause (i) that resulted in the restoration of
14 content; and

15 (D) a description of each tool, practice, ac-
16 tion, or technique used in enforcing the accept-
17 able use policy.

18 (3) **FORMAT.**—A provider of an interactive
19 computer service shall publish the information de-
20 scribed in paragraph (2) with an open license, in a
21 machine-readable and open format, and in a location
22 that is easily accessible to consumers.

23 (e) **SMALL BUSINESS PROVIDER EXEMPTIONS.**—

1 (1) LIVE COMPANY REPRESENTATIVE; TRANS-
2 PARENCY REPORT.—Subsections (a)(2)(C)(i) and (d)
3 shall not apply to a small business provider.

4 (2) PROCESSING OF COMPLAINTS.—Notwith-
5 standing the deadlines under subsection (c)(1), a
6 small business provider shall take action with re-
7 spect to illegal content, illegal activity, or potentially
8 policy-violating content under subparagraph (A) or
9 (B) of that subsection, as applicable, within a rea-
10 sonable period of time based on the size and capac-
11 ity of the provider.

12 (f) INTERNET INFRASTRUCTURE SERVICE EXEMP-
13 TION.—Subsections (a) through (e) shall not apply to a
14 provider of an interactive computer service that is used
15 by another interactive computer service for the manage-
16 ment, control, or operation of that other interactive com-
17 puter service, including for services such as web hosting,
18 domain registration, content delivery networks, caching,
19 back-end data storage, and cloud management.

20 (g) ENFORCEMENT BY COMMISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—

23 (A) IN GENERAL.—A violation of sub-
24 section (c)(1)(B), (c)(2), or (d) shall be treated
25 as a violation of a rule defining an unfair or de-

1 ceptive act or practice under section
2 18(a)(1)(B) of the Federal Trade Commission
3 Act (15 U.S.C. 57a(a)(1)(B)).

4 (B) LIMITATION ON AUTHORITY.—Nothing
5 in subparagraph (A) shall be construed to su-
6 persede paragraph (1) or (2) of section 230(c)
7 of the Communications Act of 1934 (47 U.S.C.
8 230(c)) or to otherwise authorize the Commis-
9 sion to review any action or decision by a pro-
10 vider of an interactive computer service related
11 to the application of the acceptable use policy of
12 the provider.

13 (2) POWERS OF COMMISSION.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (C), the Commission shall enforce
16 this section in the same manner, by the same
17 means, and with the same jurisdiction, powers,
18 and duties as though all applicable terms and
19 provisions of the Federal Trade Commission
20 Act (15 U.S.C. 41 et seq.) were incorporated
21 into and made a part of this Act.

22 (B) PRIVILEGES AND IMMUNITIES.—Ex-
23 cept as provided in subparagraph (C), any per-
24 son who violates this section shall be subject to
25 the penalties and entitled to the privileges and

1 immunities provided in the Federal Trade Com-
2 mission Act (15 U.S.C. 41 et seq.).

3 (C) NONPROFIT ORGANIZATIONS.—Not-
4 withstanding section 4 of the Federal Trade
5 Commission Act (15 U.S.C. 44) or any jurisdic-
6 tional limitation of the Commission, the Com-
7 mission shall also enforce this section, in the
8 same manner provided in subparagraphs (A)
9 and (B) of this paragraph, with respect to orga-
10 nizations not organized to carry on business for
11 their own profit or that of their members.

12 (h) GAO REPORT ON WHISTLEBLOWER PROTECTION
13 AND AWARDS.—Not later than 1 year after the date of
14 enactment of this Act, the Comptroller General of the
15 United States shall submit a report to Congress assessing
16 the viability, including the anticipated cost and benefit to
17 consumers, of establishing a whistleblower protection and
18 award program for employees and contractors of inter-
19 active computer services, to be administered by the Com-
20 mission, that would enable reporting and enforcement of
21 violations of consumer protections that take place online.

22 (i) NIST VOLUNTARY FRAMEWORK.—

23 (1) IN GENERAL.—Not later than 18 months
24 after the date of enactment of this Act, the Director
25 of the National Institute of Standards and Tech-

1 nology shall develop a voluntary framework, with
2 input from relevant experts, that consists of non-
3 binding standards, guidelines, and best practices to
4 manage risk and shared challenges related to, for
5 the purposes of this Act, good faith moderation
6 practices by interactive computer service providers.

7 (2) CONTENTS.—The framework developed
8 under paragraph (1) shall include—

9 (A) technical standards and processes for
10 the sharing of information among providers of
11 an interactive computer service;

12 (B) recommendations on automated detec-
13 tion tools and the appropriate nature and level
14 of human review to correct for machine error in
15 assessing nuanced or context-specific issues;

16 (C) standards and processes for providing
17 researchers access to data to conduct scientific,
18 historical, statistical, and other relevant re-
19 search, including with respect to content that is
20 removed, demonetized, or deprioritized by the
21 provider of an interactive computer service; and

22 (D) methods to strengthen the capacity of
23 a provider of an interactive computer service to
24 authenticate documentation of a determination

1 by a court that content or an activity violates
2 Federal law or State defamation law.

3 **SEC. 6. INTERMEDIARY LIABILITY.**

4 (a) INTERMEDIARY LIABILITY STANDARD.—Section
5 230(c) of the Communications Act of 1934 (47 U.S.C.
6 230(c)) is amended by adding at the end the following:

7 “(3) INTERMEDIARY LIABILITY STANDARD.—

8 “(A) IN GENERAL.—The protection under
9 paragraph (1) shall not apply to a provider of
10 an interactive computer service, with respect to
11 illegal content shared or illegal activity occur-
12 ring on the interactive computer service, if the
13 provider—

14 “(i) has knowledge of the illegal con-
15 tent or illegal activity; and

16 “(ii) subject to subparagraph (C),
17 does not remove the illegal content or stop
18 the illegal activity within 24 hours of ac-
19 quiring that knowledge, subject to reason-
20 able exceptions based on concerns about
21 the legitimacy of the notice.

22 “(B) NOTIFICATION OF ILLEGAL CONTENT
23 OR ILLEGAL ACTIVITY.—

24 “(i) IN GENERAL.—A provider of an
25 interactive computer service shall be

1 deemed to have knowledge of illegal con-
2 tent or illegal activity for purposes of sub-
3 paragraph (A) only if the provider receives
4 a notification of such content or activity
5 that substantially complies with the re-
6 quirements under clause (ii) of this sub-
7 paragraph.

8 “(ii) **ELEMENTS.**—A notification of il-
9 legal content or illegal activity provided to
10 a provider of an interactive computer serv-
11 ice as described in clause (i) shall be in
12 writing and include the following:

13 “(I) A copy of the order of a
14 Federal or State court under which
15 the content or activity was determined
16 to violate Federal law or State defa-
17 mation law, and to the extent avail-
18 able, any references substantiating the
19 validity of the order, such as the web
20 addresses of public court docket infor-
21 mation.

22 “(II) Identification of the illegal
23 content or illegal activity, and infor-
24 mation reasonably sufficient to permit

1 the provider to locate the content or
2 each account involved.

3 “(III) Information reasonably
4 sufficient to permit the provider to
5 contact the complaining party, which
6 shall include—

7 “(aa) if the complaining
8 party is a user of the interactive
9 computer service, information
10 identifying the user account; and

11 “(bb) if the complaining
12 party is not a user of the inter-
13 active computer service, an email
14 address of the complaining party.

15 “(IV) A statement by the com-
16 plaining party, made under penalty of
17 perjury in accordance with section
18 1746 of title 28, United States Code,
19 that—

20 “(aa) the content in the no-
21 tification is accurate; and

22 “(bb) the content or activity
23 described in the notification has
24 been determined by a Federal or
25 State court to be illegal.

1 “(C) EXEMPTIONS.—

2 “(i) SMALL BUSINESS PROVIDERS.—

3 Notwithstanding the deadline under clause
4 (ii) of subparagraph (A), a small business
5 provider shall take action with respect to
6 illegal content or illegal activity under that
7 subparagraph within a reasonable period of
8 time based on the size and capacity of the
9 provider.

10 “(ii) INTERNET INFRASTRUCTURE
11 SERVICES.—Subparagraph (A) shall not
12 apply with respect to an interactive com-
13 puter service that is used by another inter-
14 active computer service for the manage-
15 ment, control, or operation of that other
16 interactive computer service, including for
17 services such as web hosting, domain reg-
18 istration, content delivery networks,
19 caching, back-end data storage, and cloud
20 management.

21 “(D) MONITORING OR AFFIRMATIVE FACT-
22 SEEKING NOT REQUIRED.—Nothing in this
23 paragraph shall be construed to condition the
24 applicability of paragraph (1) to a provider of
25 an interactive computer service on the provider

1 monitoring the interactive computer service or
2 affirmatively seeking facts indicating illegal con-
3 tent or illegal activity in order to identify in-
4 stances of noticed activity or content additional
5 to any instances about which the provider has
6 received a notification.

7 “(E) ENFORCEMENT EXEMPTION.—Noth-
8 ing in this paragraph shall be construed to im-
9 pair or limit the application of subsection (e)(1)
10 or (g).”.

11 (b) DEFINITIONS.—Section 230(f) of the Commu-
12 nications Act of 1934 (47 U.S.C. 230(f)) is amended by
13 adding at the end the following:

14 “(5) ILLEGAL ACTIVITY.—The term ‘illegal ac-
15 tivity’ means activity conducted by an information
16 content provider that has been determined by a Fed-
17 eral or State court to violate Federal criminal or
18 civil law.

19 “(6) ILLEGAL CONTENT.—The term ‘illegal
20 content’ means information provided by an informa-
21 tion content provider that has been determined by a
22 Federal or State court to violate Federal criminal or
23 civil law or State defamation law.

24 “(7) SMALL BUSINESS PROVIDER.—The term
25 ‘small business provider’ means a provider of an

1 interactive computer service that, during the most
2 recent 24-month period—

3 “(A) received fewer than 1,000,000 month-
4 ly active users or monthly visitors; and

5 “(B) accrued revenue of less than
6 \$25,000,000.”.

7 (c) TECHNICAL CORRECTION.—Section 230(c)(2)(B)
8 of the Communications Act of 1934 (47 U.S.C.
9 230(c)(2)(B)) is amended by striking “paragraph (1)”
10 and inserting “subparagraph (A)”.

11 **SEC. 7. FEDERAL AND STATE ENFORCEMENT.**

12 (a) FEDERAL ENFORCEMENT.—Section 230(e)(1) of
13 the Communications Act of 1934 (47 U.S.C. 230(e)) is
14 amended—

15 (1) in the heading, by striking “CRIMINAL
16 LAW” and inserting “FEDERAL CRIMINAL OR CIVIL
17 LAW”;

18 (2) by inserting “by the Federal Government”
19 after “enforcement”; and

20 (3) by striking “or any other Federal criminal
21 statute” and inserting “any other Federal criminal
22 or civil statute, or any regulations of an Executive
23 agency (as defined in section 105 of title 5, United
24 States Code) or an establishment in the legislative or
25 judicial branch of the Federal Government”.

1 (b) ENFORCEMENT OF FEDERAL CIVIL LAWS BY
2 STATE ATTORNEYS GENERAL.—Section 230 of the Com-
3 munications Act of 1934 (47 U.S.C. 230) is amended by
4 adding at the end the following:

5 “(g) ENFORCEMENT OF FEDERAL CIVIL LAWS BY
6 STATE ATTORNEYS GENERAL.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of this section, and in consultation with
9 the Attorney General, the attorney general of a
10 State alleging a violation by a provider of an inter-
11 active computer service of a Federal civil law that
12 affects or may affect the State or the residents of
13 the State may bring a civil action on behalf of the
14 residents of the State in any district court of the
15 United States for the district in which the provider
16 is found or transacts business if the underlying
17 claim would constitute a violation of the substantive,
18 nonjurisdictional elements of a civil law of the State.

19 “(2) RELATION TO OTHER LAWS.—Nothing in
20 paragraph (1) shall be construed to impair or limit
21 the authority of the attorney general of a State
22 under any other Federal law to bring a civil action
23 on behalf of the residents of the State against a pro-
24 vider of an interactive computer service for violation
25 of a Federal civil law.”.

1 **SEC. 8. SEVERABILITY.**

2 If any provision of this Act or an amendment made
3 by this Act, or the application of such a provision or
4 amendment to any person or circumstance, is held to be
5 unenforceable or invalid, the remaining provisions of this
6 Act and amendments made by this Act, and the applica-
7 tion of the provision or amendment so held to other per-
8 sons not similarly situated or to other circumstances, shall
9 not be affected thereby.

10 **SEC. 9. EFFECTIVE DATE.**

11 This Act and the amendments made by this Act shall
12 take effect on the date that is 1 year after the date of
13 enactment of this Act.