AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3149

OFFERED BY MR. AUCHINCLOSS OF MASSACHUSETTS

Page 1, strike line 1 and all that follows through page 26, line 7 and insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2   (a) SHORT TITLE.—This Act may be cited as the

3 "Parents Over Platforms Act".

4   (b) TABLE OF CONTENTS.—The table of contents for

5 this Act is as follows:

6 **SEC. 2. DEFINITIONS.**

7   In this Act:

8   (1) ADULT.—The term "Adult" means an ac-

9   count holder who is or is estimated to be 18 years

10   of age or older.

2

1 (2) AGE CATEGORY.—The term "Age Cat-
2 egory" means categorization of an individual based
3 on age or estimated age, including a description of
4 the user as a Minor, Adult, or being within a given
5 age range.

6 (3) AGE SIGNAL.—The term "Age Signal"
7 means a signal that indicates an account holder's
8 Age Category, which the account holder or the ac-
9 count holder's parent has agreed to share.

10 (4) APPLICATION.—The term "Application"
11 means a software program that is—

12 (A) designed to be run on a Connected De-
13 vice, and to perform, or to help the user per-
14 form a specific task on the Connected Device;
15 and

16 (B) distributed through an Application
17 Distribution Provider.
18 The term does not include websites or internet
19 Browser extensions, or software with a primary pur-
20 pose of extending the functionality of an internet
21 Browser.

22 (5) APPLICATION DISTRIBUTOR.—The term
23 "Application Distributor" means a software applica-
24 tion that distributes Applications from Developers to

3

1 users of a Connected Device. The term does not in-

2 clude internet Browsers.

3 (6) APPLICATION DISTRIBUTION PROVIDER.—

4 The term "Application Distribution Provider" means

5 an entity, company, or organization that owns, oper-

6 ates, or controls an Application Distributor.

7 (7) CONNECTED DEVICE.—The term "Con-

8 nected Device" means a smartphone, tablet, gaming

9 console, or virtual reality device that enables users

10 to connect to the internet and download software ap-

11 plications.

12 (8) COVERED APPLICATION.—The term "Cov-

13 ered Application" means an Application that is not

14 an Application Distributor and that a Developer pro-

15 vides, whether legally required or not, a different ex-

16 perience for Adults than for Minors or an experience

17 that is intended only for Adults. This includes, but

18 is not limited to, Developers that provide different

19 account types, content, or features or engage in dif-

20 ferent advertising or data practices depending on a

21 user's age. The term does not include internet

22 Browsers or Online Search Engines.

23 (9) DEVELOPER.—The term "Developer"

24 means any person, entity, company, or organization

25 that creates, owns, or controls an Application.

1 (10) MINOR.—The term "Minor" means an ac-
2 count holder who is or is estimated to be under the
3 age of 18.

4 (11) COVERED WEBSITE.—The term "Covered
5 Website" means a website that provides a URL-ac-
6 cessible or web version of a Covered Application.
7 The term does not include internet Browsers or On-
8 line Search Engines.

9 (12) PERSONALIZED ADVERTISING.—"Personal-
10 ized Advertising" means displaying advertisements
11 to an account holder where the advertisement is se-
12 lected based on personal data obtained from that ac-
13 count holder's activities over time and across non-af-
14 filiated websites or online applications to predict
15 such account holder's preferences or interests.
16 "Personalized Advertising" does not include:

17 (1) Advertising based on an account holder's
18 activities within a Developer's own Application or
19 Applications;

20 (2) Advertising based on the context of an ac-
21 count holder's current interaction with an Applica-
22 tion;

23 (3) Advertising directed to an account holder in
24 response to the account holder's direct request for
25 information or feedback; or

1   (4) The processing of personal data solely for
2 measuring or reporting advertising performance,
3 reach, or frequency.

TITLE I—APPLICATION DISTRIBUTOR AND DEVELOPER RESPONSIBILITIES

SEC. 101. AGE ASSURANCE.

8   (a) RESPONSIBILITIES OF APPLICATION DISTRIBU
9 TION PROVIDERS.—An Application Distribution Pro
10 vider—

11   (1) shall ask account holders to declare their
12   age when creating an account with the Application
13   Distribution Provider;

14   (2) may use commercially reasonable efforts to
15   obtain the Age Category of an account holder with
16   a reasonable level of certainty;

17   (3) may provide account holders with a mecha
18   nism to obtain their Age Category and the ability to
19   request an update if they believe their Age Category
20   is incorrect; and

21   (4) shall provide Developers of Covered Applica
22   tions the technical ability to call an Age Signal
23   where the account holder or the account holder's
24   parent has agreed to such sharing.

25   (b) RULE OF CONSTRUCTION.—

1 (1) Nothing in this section shall be construed to
2 preclude an Application Distribution Provider from
3 using multiple commercially reasonable methods to
4 obtain, estimate, or provide the Age Category of an
5 account holder.

6 (2) Nothing in this section shall be construed to
7 restrict an Application Distribution Provider's ability
8 to satisfy this section by obtaining a Minor account
9 holder's age from the Minor's parent.

10 **SEC. 102. APPLICATION DISTRIBUTOR AND DEVELOPER OB-**
11 **LIGATIONS.**

12 (a) APPLICATION DISTRIBUTION PROVIDERS.—An
13 Application Distribution Provider—

14 (1) shall provide the account holder's parent
15 with the ability to prevent account holders who are
16 not Adults from acquiring or using the Developer's
17 Covered Application from the Application Dis-
18 tributor;

19 (2) shall provide the Developer of a Covered
20 Application with the ability to prevent account hold-
21 ers who are not Adults from acquiring or using the
22 Developer's Covered Application from the Applica-
23 tion Distributor.

24 (2) shall provide the capability to Developers to
25 provide information regarding their relevant parental

1   controls for a Covered Application through a central-

2   ized product page or user interface, hosted by the

3   Application Distribution Provider, that provides rel-

4   evant information about a Covered Application;

5   (3) shall comply with the obligations set out in

6   subsection (b) for its own Covered Applications for

7   which the Application Distribution Provider is also

8   the Developer; and

9   (4) shall not use data collected from third-party

10   Covered Applications in the course of compliance

11   with this section to give the Application Distribution

12   Provider preference relative to those of third parties,

13   or to otherwise use such data in an anticompetitive

14   manner.

15   (b) DEVELOPERS OF COVERED APPLICATIONS.—A

16   Developer of a Covered Application—

17   (1) shall report to the Application Distribution

18   Provider whether their Applications provide a dif-

19   ferent experience for Adults than for users who are

20   not Adults or is intended only for Adults;

21   (2) shall provide information regarding privacy

22   and online safety settings to help parents support

23   Minors using their Covered Applications, unless

24   their Application is intended only for Adults and

25   blocks Minors;

1 (3) shall use commercially reasonable efforts to
2 determine whether a user is an Adult or a Minor
3 with a reasonable level of certainty;

4 (4) shall make a reasonable effort to ensure
5 that users who are Minors cannot engage in any ac-
6 tivity that has been restricted by the developer for
7 Adults only;

8 (5) shall obtain consent prior to permitting
9 Minor account holders from accessing a portion of a
10 Covered Application that the Developer has des-
11 ignated as unsuitable for use by Minors without pa-
12 rental guidance or supervision, or from accessing
13 content within the Covered Application that is age-
14 gated by law;

15 (6) shall not deliver personalized advertising to
16 Minors; and

17 (7) if the Developer determines that it is a Cov-
18 ered Application, and chooses to call an Age Signal
19 facilitated by an Application Distribution Provider to
20 satisfy the requirements of this section, the Devel-
21 oper—

22 (A) shall request the minimum amount of
23 information needed for purposes of compliance
24 with this Act;

1 (B) may not willfully disregard any infor-
2 mation regarding an individual's age or Age
3 Category that is otherwise available to the De-
4 veloper;

5 (C) may not share the information ob-
6 tained from the Age Signal with third parties,
7 except for a service provider, but only if nec-
8 essary for such service provider to implement
9 safety measures or privacy protections for mi-
10 nors or otherwise required to do so by law; and

11 (D) may not use the Age Signal for any
12 purpose beyond that intended by this Act, in-
13 cluding but not limited to using the Age Signal
14 to back into or attempt to back into a user's
15 date of birth.

16 (8) if the Developer uses a method other than
17 an Age Signal provided by an Application Distribu-
18 tion Provider to satisfy the requirements of this sec-
19 tion, the Developer—

20 (A) shall request the minimum amount of
21 information needed for purposes of compliance
22 with this Act;

23 (B) may not willfully disregard any infor-
24 mation regarding an individual's age or Age
25 Category that is available to the Developer;

1 (C) may not share the information ob-
2 tained in the course of complying with this sec-
3 tion with third parties, except for a service pro-
4 vider, but only if necessary for such service pro-
5 vider to implement safety measures or privacy
6 protections for minors or otherwise required to
7 do so by law; and

8 (D) may not use age data for any purpose
9 beyond that intended by this Act, including but
10 not limited to using age data to back into or at-
11 tempt to back into a user's date of birth.

12 (c) RULE OF CONSTRUCTION.—

13 (1) RELIANCE ON AGE DETERMINATIONS.—If
14 the Developer and an Application Distribution Pro-
15 vider are controlled by the same entity, the Devel-
16 oper may rely on age determinations made by that
17 entity.

18 (2) APPLICABILITY.—Developers of Covered
19 websites shall have the same requirements as Devel-
20 opers of Covered Applications in this Act and may
21 carry over to Covered websites an Age Signal re-
22 ceived from an Application Distribution Provider to
23 fulfill such requirements.

24 (3) AGE SIGNALS.—For the purposes of this
25 section, an Age Signal provided by an Application

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1 Distribution Provider shall be considered a commer-
2 cially reasonable effort, unless a Developer's Appli-
3 cation is intended only for Adults and blocks Minors
4 and is required by law to restrict access to Adults,
5 in which case—

6   (A) an Age Signal provided by an Applica-
7   tion Distribution Provider indicating a user is
8   a Minor shall be sufficient basis to block access;
9   and

10   (B) an Age Signal provided by an Applica-
11   tion Distribution Provider indicating a user is
12   an Adult shall not, by itself, satisfy the require-
13   ment to determine whether a user is an Adult
14   with a reasonable level of certainty, including
15   for purposes of other laws that require access
16   restrictions based on age.

17 (4) USER INTERFACES FOR PARENTS.—Noth-
18 ing in this section shall prevent Application Dis-
19 tribution Providers from creating a user interface or
20 centralized page for account holder's parents to
21 block categories by age rating of Covered Applica-
22 tions based on the content and features of the Cov-
23 ered Application.

TITLE II—LIABILITY AND ENFORCEMENT

SEC. 201. ENFORCEMENT.

(a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.— A violation of this Act or a regulation promulgated thereunder shall be treated as a violation of a rule defining an unfair or deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) POWERS OF THE COMMISSION.—

(1) IN GENERAL.—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.—Any person who violates this Act or a regulation promulgated thereunder 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.).

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1   (3) AUTHORITY PRESERVED.—Nothing in this

2   Act shall be construed to limit the authority of the

3   Commission under any other provision of law.

4 SEC. 202. SEVERABILITY.

5   If any provision of this Act or the application of any

6 provision to any person or circumstance is held invalid by

7 a final decision of a court of competent jurisdiction, the

8 remainder of this Act shall be given effect without the in-

9 valid provision or application.

10 SEC. 203. EFFECTIVE DATE.

11   This Act shall take effect not later than 24 months

12 after the date of the enactment of this Act.

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