

**[DISCUSSION DRAFT]**

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R.** \_\_\_\_\_

To require internet platform companies to implement and maintain reasonable content moderation policies and practices to address the sale of counterfeit products, illegal products, and stolen products and materials on the platforms of such companies, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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**A BILL**

To require internet platform companies to implement and maintain reasonable content moderation policies and practices to address the sale of counterfeit products, illegal products, and stolen products and materials on the platforms of such companies, 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 [“\_\_\_\_\_ Act  
5 of 2021”].

1 **SEC. 2. REASONABLE CONTENT MODERATION POLICIES**  
2 **AND PRACTICES TO ADDRESS THE SALE OF**  
3 **COUNTERFEIT PRODUCTS, ILLEGAL PROD-**  
4 **UCTS, AND STOLEN PRODUCTS AND MATE-**  
5 **RIALS ONLINE.**

6 (a) IN GENERAL.—Each covered company shall im-  
7 plement and maintain reasonable content moderation poli-  
8 cies and practices to address the sale of counterfeit prod-  
9 ucts, illegal products, and stolen products and materials  
10 on such covered company’s platform, taking into consider-  
11 ation—

12 (1) the size of, and the nature, scope, and com-  
13 plexity of the activities engaged in by, such covered  
14 company; and

15 (2) the current state of the art in administra-  
16 tive, technical, and technological means for moder-  
17 ating such content.

18 (b) MATTERS REQUIRED TO BE INCLUDED.—Each  
19 covered company shall maintain content moderation poli-  
20 cies and practices that include the following:

21 (1) A written content moderation policy with re-  
22 spect to identifying and removing content regarding  
23 the sale of counterfeit products, illegal products, and  
24 stolen products and materials on such covered com-  
25 pany’s platform.

1           (2) The identification of an officer or other in-  
2           dividual as the point of contact with responsibility  
3           for the management of the covered company's con-  
4           tent moderation policies and practices regarding the  
5           sale of counterfeit products, illegal products, and  
6           stolen products and materials.

7           (3) A process for identifying content regarding  
8           the sale of counterfeit products, illegal products, and  
9           stolen products and materials on such covered com-  
10          pany's platform.

11          (4) A process for taking preventive measures to  
12          mitigate against reasonably foreseeable content re-  
13          garding the sale of counterfeit products, illegal prod-  
14          ucts, and stolen products and materials on such cov-  
15          ered company's platform.

16          (5) A process for employee training and super-  
17          vision for implementation of the policies, practices,  
18          and procedures required by this Act.

19          (c) MONITORING, EVALUATION, AND ADJUST-  
20          MENT.—Not less frequently than every 12 months, each  
21          covered company shall monitor, evaluate, and adjust, as  
22          appropriate, the content moderation policies and practices  
23          of such covered company in light of any relevant changes  
24          in—

25                 (1) technology; and

1           (2) the changing business arrangements of the  
2 covered company, such as—

3           (A) mergers and acquisitions;

4           (B) alliances and joint ventures;

5           (C) outsourcing arrangements;

6           (D) bankruptcy; and

7           (E) changes to personal information sys-  
8 tems.

9 **SEC. 3. FTC-APPROVED COMPLIANCE GUIDELINES.**

10       (a) IN GENERAL.—A covered company or group of  
11 covered companies may apply to the Commission for ap-  
12 proval of one or more sets of self-regulatory guidelines re-  
13 lated to content moderation policies and practices to ad-  
14 dress the sale of counterfeit products, illegal products, and  
15 stolen products and materials on such covered company’s  
16 platform or such group of covered companies’ platforms.

17       (b) COMMISSION REVIEW.—

18           (1) INITIAL APPROVAL.—

19           (A) OPPORTUNITY FOR PUBLIC COM-  
20 MENT.—As soon as feasible after the receipt of  
21 proposed guidelines submitted under subsection  
22 (a), the Commission shall provide an oppor-  
23 tunity for public comment on such proposed  
24 guidelines.

1                   (B) REQUIREMENTS FOR APPROVAL.—The  
2                   Commission shall approve an application re-  
3                   garding proposed guidelines under subsection  
4                   (a) if the applicant demonstrates that such  
5                   guidelines—

6                               (i) meet or exceed the requirements of  
7                               this Act;

8                               (ii) provide for the regular review and  
9                               validation by an independent organization  
10                              not associated with the covered company or  
11                              group of covered companies and approved  
12                              by the Commission to conduct such reviews  
13                              of the content moderation policies and  
14                              practices of such covered company or  
15                              group of covered companies to ensure that  
16                              such covered company or group of covered  
17                              companies continues to meet or exceed the  
18                              requirements of this Act; and

19                              (iii) include a means of enforcement if  
20                              the covered company or group of covered  
21                              companies does not meet or exceed the re-  
22                              quirements of this Act, which may include  
23                              referral to the Commission for enforcement  
24                              consistent with section 4.

1 (C) DEADLINE.—Not later than **180**  
2 **days** after receiving an application for ap-  
3 proval of proposed guidelines submitted under  
4 subsection (a), the Commission shall issue a de-  
5 termination approving or denying such applica-  
6 tion and providing its reasons for approving or  
7 denying such application.

8 (2) APPROVAL OF MODIFICATIONS.—

9 (A) APPROVAL REQUIRED.—If a covered  
10 company or group of covered companies makes  
11 material changes to guidelines previously ap-  
12 proved by the Commission, such covered com-  
13 pany or group of covered companies shall sub-  
14 mit the updated guidelines to the Commission  
15 for approval.

16 (B) DEADLINE.—Not later than **90**  
17 **days** after a covered company or group of cov-  
18 ered companies submits to the Commission up-  
19 dated guidelines under subparagraph (A), the  
20 Commission shall approve or deny any material  
21 change to the guidelines.

22 (3) WITHDRAWAL OF APPROVAL.—If at any  
23 time the Commission determines that the guidelines  
24 previously approved no longer meet the requirements  
25 of this Act or that compliance with the approved

1 guidelines is insufficiently enforced by the covered  
2 company or group of covered companies, the Com-  
3 mission shall notify such covered company or group  
4 of covered companies of its intention to withdraw  
5 approval of such guidelines and the basis for doing  
6 so. If, not later than 90 days after receipt of such  
7 notice, such covered company or group of covered  
8 companies cures any such alleged deficiency, the  
9 Commission may not withdraw approval of such  
10 guidelines.

11 (c) SAFE HARBOR.—A covered company shall be  
12 deemed in compliance with this Act if such covered com-  
13 pany is in compliance with guidelines approved by the  
14 Commission under this section. If such covered company  
15 is not in compliance with guidelines approved under this  
16 section, such covered company is subject to enforcement  
17 under section 4.

18 **SEC. 4. ENFORCEMENT.**

19 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
20 SION.—

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 prescribed under section 18(a)(1)(B)

1 of the Federal Trade Commission Act (15 U.S.C.  
2 57a(a)(1)(B)).

3 (2) ACTIONS BY THE COMMISSION.—The Com-  
4 mission shall enforce this Act in the same manner,  
5 by the same means, and with the same jurisdiction,  
6 powers, and duties as though all applicable terms  
7 and provisions of the Federal Trade Commission Act  
8 (15 U.S.C. 41 et seq.) were incorporated into and  
9 made a part of this Act, and any covered company  
10 that violates this Act shall be subject to the pen-  
11 alties and entitled to the privileges and immunities  
12 provided in the Federal Trade Commission Act.

13 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
14 ERAL.—

15 (1) IN GENERAL.—If the attorney general of a  
16 State has reason to believe that any covered com-  
17 pany has violated or is violating this Act that affects  
18 one or more residents of that State, the attorney  
19 general of the State may bring a civil action exclu-  
20 sively in an appropriate district court of the United  
21 States to—

22 (A) enjoin further such violation by the de-  
23 fendant;

24 (B) enforce compliance with this Act;



1 (C) obtain civil penalties in the amount  
2 provided for under subsection (a);

3 (D) obtain other remedies permitted under  
4 State law; or

5 (E) obtain damages, restitution, or other  
6 compensation on behalf of residents of the  
7 State.

8 (2) NOTICE.—The attorney general of a State  
9 shall provide prior written notice of any action under  
10 paragraph (1) to the Commission and provide the  
11 Commission with a copy of the complaint in the ac-  
12 tion, except in any case in which such prior notice  
13 is not feasible, in which case the attorney general  
14 shall serve such notice immediately upon instituting  
15 such action.

16 (3) INTERVENTION BY THE FTC.—Upon receiv-  
17 ing notice under paragraph (2), the Commission  
18 shall have the right—

19 (A) to intervene in the action;

20 (B) upon so intervening, to be heard on all  
21 matters arising therein; and

22 (C) to file petitions for appeal.

23 (4) LIMITATION ON STATE ACTION WHILE FED-  
24 ERAL ACTION IS PENDING.—If the Commission has  
25 instituted a civil action for violation of this Act, no

1 State attorney general may bring a separate action  
2 under paragraph (1) during the pendency of the ac-  
3 tion of the Commission against any defendant  
4 named in the complaint of the Commission for any  
5 violation of this Act that is alleged in the complaint.  
6 A State attorney general may join a civil action for  
7 a violation of this Act filed by the Commission.

8 (5) RULE OF CONSTRUCTION.—For purposes of  
9 bringing a civil action under paragraph (1), nothing  
10 in this Act shall be construed to prevent the attor-  
11 ney general of a State from exercising the powers  
12 conferred on such attorney general by the laws of  
13 the State to conduct investigations, administer oaths  
14 or affirmations, or compel the attendance of wit-  
15 nesses or the production of documentary and other  
16 evidence.

17 (6) ACTIONS BY OTHER STATE OFFICIALS.—

18 (A) IN GENERAL.—In addition to civil ac-  
19 tions brought by attorneys general under para-  
20 graph (1), any other officer of a State who is  
21 authorized by the State to do so, except for any  
22 private person on behalf of the State, may bring  
23 a civil action under paragraph (1), subject to  
24 the same requirements and limitations that

1 apply under this subsection to civil actions  
2 brought by attorneys general.

3 (B) SAVINGS PROVISION.—Nothing in this  
4 subsection may be construed to prohibit an au-  
5 thorized official of a State from initiating or  
6 continuing any proceeding in a court of the  
7 State for a violation of any civil or criminal law  
8 of the State.

9 **SEC. 5. RELATIONSHIP BETWEEN FEDERAL AND STATE**  
10 **LAW.**

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

15 **SEC. 6. DEFINITIONS.**

16 In this Act:

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

19 [(2) COVERED COMPANY.—The term “covered  
20 company” means a company that provides any inter-  
21 net platform that—]

22 [(A) generates \$1,000,000,000 or more in  
23 annual revenue; and]

24 [(B) has 100,000,000 or more global ac-  
25 tive users.]

1           **[(3) COUNTERFEIT PRODUCT.—The term**  
2           **“counterfeit product” means—]**  
3           **[(A) a counterfeit mark (as defined in sec-**  
4           **tion 2320(f) of title 18, United States Code);**  
5           **or]**  
6           **[(B) a counterfeit military good or service**  
7           **(as defined in such section).]**