

117TH CONGRESS  
1ST SESSION

# H. R. 4240

To prohibit digital platforms from using information about a user unless the user consents to such use, to ensure personal information is considered a property right, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 2021

Mr. SCHWEIKERT introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit digital platforms from using information about a user unless the user consents to such use, to ensure personal information is considered a property right, 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 “User Data Protection  
5 Act”.

6 **SEC. 2. PROHIBITION ON REQUIREMENT TO ACCEPT COOK-**

7 **IES.**

8 (a) IN GENERAL.—

1           (1) TRACKING AND USER PROPERTY RIGHTS.—

2           It shall be unlawful for the operator of a digital plat-  
3           form or any third-party platform to do any of the  
4           following:

5                   (A) Without the consent of the user—

6                           (i) use cookies for the digital plat-  
7                           form;

8                           (ii) collect and store any information  
9                           about the user, including any habit or pref-  
10                          erence of the user; and

11                          (iii) deliver content to the user that  
12                          corresponds with any of the personal infor-  
13                          mation of the user.

14                   (B) Restrict a user from using a digital  
15                   platform if the user declines to consent to any  
16                   of the activities described in subparagraph (A).

17                   (C) Use tracking pixels.

18                   (D) Share information about a user with  
19                   other digital platforms or online businesses.

20           (2) PROPERTY RIGHTS FOR USER INFORMA-

21           TION.—The operator of a digital platform shall do  
22           the following:

23                   (A) If a user consents to the digital plat-  
24                   form collecting, storing, or using the informa-

1 tion about the user, provide a disclosure state-  
2 ment—

3 (i) that includes a description of the  
4 information that the digital platform in-  
5 tends to collect, store, or use, what the in-  
6 formation will be used for, and what the  
7 digital platform determines the economic  
8 value of the information to be;

9 (ii) that is consistent across all digital  
10 platforms; and

11 (iii) the form of which shall be deter-  
12 mined by the Commission.

13 (B) Make the disclosure statement acces-  
14 sible to the individual on the platform.

15 (C) Treat any information collected,  
16 stored, or used by the digital platform or infor-  
17 mation that a user generates on the digital  
18 platform as an exclusive property right owned  
19 by that user.

20 (D) Determine the economic value of the  
21 information described under subparagraph (A)  
22 as a property right.

23 (E) Provide an update to users if there is  
24 any change in the collection, storage, or use of  
25 the information described under subparagraph

1 (A) or the economic value determined under  
2 subparagraph (D).

3 (b) ENFORCEMENT.—

4 (1) ENFORCEMENT BY THE FEDERAL TRADE  
5 COMMISSION.—

6 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
7 TICES.—A violation of subsection (a) shall be  
8 treated as a violation of a regulation under sec-  
9 tion 18(a)(1)(B) of the Federal Trade Commis-  
10 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding  
11 unfair or deceptive acts or practices.

12 (B) POWERS OF COMMISSION.—The Com-  
13 mission shall enforce subsection (a) in the same  
14 manner, by the same means, and with the same  
15 jurisdiction, powers, and duties as though all  
16 applicable terms and provisions of the Federal  
17 Trade Commission Act (15 U.S.C. 41 et seq.)  
18 were incorporated into and made a part of this  
19 Act. Any person who violates such subsection  
20 shall be subject to the penalties and entitled to  
21 the privileges and immunities provided in the  
22 Federal Trade Commission Act.

23 (2) EFFECT ON OTHER LAWS.—Nothing in this  
24 section shall be construed in any way to limit the  
25 authority of the Commission under any other provi-

1 sion of law or to limit the application of any Federal  
2 or State law.

3 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-  
4 ERAL.—

5 (A) IN GENERAL.—If the chief law en-  
6 forcement officer of a State, or an official or  
7 agency designated by a State, has reason to be-  
8 lieve that any person has violated or is violating  
9 subsection (a), the attorney general, official, or  
10 agency of the State, in addition to any author-  
11 ity it may have to bring an action in State  
12 court under its consumer protection law, may  
13 bring a civil action in any appropriate United  
14 States district court or in any other court of  
15 competent jurisdiction, including a State court,  
16 to—

17 (i) enjoin further such violation by  
18 such person;

19 (ii) enforce compliance with such sub-  
20 section;

21 (iii) obtain civil penalties; and

22 (iv) obtain damages, restitution, or  
23 other compensation on behalf of residents  
24 of the State.

1 (B) NOTICE AND INTERVENTION BY THE  
2 FEDERAL TRADE COMMISSION.—The attorney  
3 general of a State shall provide prior written  
4 notice of any action under subparagraph (A) to  
5 the Commission and provide the Commission  
6 with a copy of the complaint in the action, ex-  
7 cept in any case in which such prior notice is  
8 not feasible, in which case the attorney general  
9 shall serve such notice immediately upon insti-  
10 tuting such action. The Commission shall have  
11 the right—

12 (i) to intervene in the action;

13 (ii) upon so intervening, to be heard  
14 on all matters arising therein; and

15 (iii) to file petitions for appeal.

16 (C) LIMITATION ON STATE ACTION WHILE  
17 FEDERAL ACTION IS PENDING.—If the Commis-  
18 sion has instituted a civil action for violation of  
19 this section, no State attorney general, or offi-  
20 cial or agency of a State, may bring an action  
21 under this paragraph during the pendency of  
22 that action against any defendant named in the  
23 complaint of the Commission for any violation  
24 of this section alleged in the complaint.

25 (c) PRIVATE CAUSE OF ACTION.—

1           (1) ACTION.—A user who suffers harm as a re-  
2           sult of a violation of subsection (a) may bring an ac-  
3           tion against the operator of a digital platform in the  
4           appropriate district court of the United States to en-  
5           join such violation and for damages.

6           (2) DAMAGES.—A user who suffers harm as a  
7           result of a violation of subsection (a) shall not re-  
8           ceive less than 90 percent of total damages.

9           (3) ATTORNEY’S FEES.—The amount of an  
10          award of attorney’s fees under this subsection may  
11          not exceed an amount equal to 33 percent of the  
12          damages awarded to the user.

13          (d) FEDERAL PREEMPTION.—This Act preempts any  
14          State law relating to the requirements described under  
15          this Act.

16          (e) DEFINITIONS.—In this section:

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

19               (2) COOKIES.—The term “cookies” means in-  
20               formation saved by a web browser that allows the  
21               browser to recognize a device and track a user over  
22               time.

23               (3) DIGITAL PLATFORM.—The term “digital  
24               platform” means any technology-enabled content

1 producer and includes a website, an online business,  
2 and an application for a device.

3 (4) **THIRD-PARTY PLATFORM.**—The term  
4 “third-party platform” means an entity that con-  
5 tracts with a digital platform to use their website,  
6 online business, or application for a device for adver-  
7 tising or other purposes.

8 (5) **TRACKING PIXEL.**—The term “tracking  
9 pixel” means a tiny pixel-sized image, hidden or em-  
10 bedded in an online page and used for collecting  
11 data about a user.

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