

## **An Act**

To support research about the impact of digital communication platforms on society by providing privacy-protected, secure pathways for independent research on data held by large internet companies.

### **SEC. 1. Short Title**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Platform Transparency and Accountability Act."

### **SEC. 2. Congressional Findings and Purpose**

- (a) The Congress finds that certain of the Nation's largest internet platforms exert unprecedented control over the speech marketplace that threatens the safety and integrity of our electoral processes, increases our vulnerability to propaganda attacks by hostile nation-states, misleads the public as to critical facts necessary to promote public health and well-being, and exacerbates anti-competitive effects on interstate commerce.
- (b) Because of the unprecedented control these platforms exercise over massive amounts of user data and the speech marketplace, Congress finds it necessary to promote independent research on those platforms in order to reveal and help address societal and individual harms caused or exacerbated by these new technologies.
- (c) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible free and fair elections in this Nation so as to preserve our republican form of government, guard against foreign propaganda, and ensure the free flow of information in interstate commerce –
  - (1) by providing that Qualified Platforms and Qualified Researchers have separate but dependent responsibilities, interests, and rights with respect to obtaining data and information for Qualified Research Projects that will benefit the public good while protecting the privacy rights of the individual user;
  - (2) by authorizing the Federal Trade Commission to set mandatory data and information sharing requirements applicable to Qualified Platforms affecting interstate commerce, and by creating a Platform Transparency and Accountability Division for carrying out adjudicatory functions under the Act;
  - (3) by providing the groundwork for understanding the prevalence and character of disinformation, hate speech, and harmful and illegal content spreading by way of large Qualified Platforms, as well as potential political bias in content moderation practices and in algorithmic prioritization of content on those platforms;
  - (4) by investigating the use of large internet platforms by domestic and foreign actors seeking to undermine United States democracy and confidence in the election infrastructure;

- (5) to ensure that the market power of certain Qualified Platforms does not pose anticompetitive effects that restrain the information economy; and
- (6) to help inform policy makers and regulatory agencies by promoting an accurate understanding of the practices of Qualified Platforms and the dynamics of social media.

### **SEC. 3. Definitions**

For the purposes of this Act --

- (1) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.
- (2) The term "Commission" or "FTC" means the Federal Trade Commission established under the FTC Act.
- (3) The term "Chair" means the Chair of the Federal Trade Commission.
- (4) The term "Director" means the Director of the Platform Transparency and Accountability Division appointed by the Chair of the Federal Trade Commission.
- (5) The term "Division" means the Platform Transparency and Accountability Division within the Federal Trade Commission.
- (6) The term "Personal Information" means any information that is reasonably capable of being associated with a particular individual.
- (7) The term "Qualified Platform" means a large, consumer-facing, online or internet-accessible business that meets the criteria for the same established by the Division or its appropriate delegate. Qualified Platforms must have over forty million active monthly Users of their service in the United States and shall include, but are not limited to, any provider of a large online platform, including an online social media service, which, at the request of a recipient of the service, stores and disseminates information to the public.
- (8) The term "Qualified Data and Information" means information from a Qualified Platform that meets the criteria for the same established by the Division or its appropriate delegate. Qualified Data and Information may include information about User exposure, engagement, and other behaviors; data about content producers and content production policies; information that the Qualified Platform otherwise makes available for sale to commercial entities or advertisers; information that goes into the preparation of reports that Qualified Platforms provide to the government or other entities, such as those relating to enforcement of community standards; and metadata related to any of the preceding categories.
- (9) The term "Qualified Researcher" means a university-affiliated researcher conducting research according to a research plan that has been approved by the Division or its appropriate delegate. No employee of a state or federal law enforcement agency or any government employee except for a university-affiliated researcher shall be considered a Qualified Researcher.

- (10) The term “Qualified Research Project” means a research plan that has been approved by the Division or its appropriate delegate.
- (11) The term "State" includes any state within the United States, as well as the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, and Guam.
- (12) The term "Scrape" or “Scraping” refers to the act of electronically collecting data that Platforms make available via the user interface, either manually or through an automated process.
- (13) The term “User” means a person or entity that uses a social media platform or online marketplace for any purpose, including advertisers and sellers, regardless of whether that person has an account or is otherwise registered with the platform.

**SEC. 4. Obligations and Immunity for Qualified Platforms**

- (a) Each Qualified Platform shall comply with applicable federal, state, and local information sharing and privacy laws and regulations as well as all rules, standards, regulations, and orders issued by the FTC pursuant to this Act which are applicable to their own actions and conduct.
- (b) In order to meet its obligations under this Act, a Qualified Platform must provide reasonable privacy and cybersecurity safeguards for the Qualified Data and Information that the Platform shares with Qualified Researchers. Such safeguards, at minimum, shall include
  - (1) encryption of the data in transit and at rest;
  - (2) delivery of data in a format determined by the Division that is not reasonably capable of being associated or linked with a particular individual;
  - (3) use and monitoring of a secure environment to facilitate delivery of the Qualified Data and Information to Qualified Researchers while protecting against unauthorized use of such data;
  - (4) evaluation by the Qualified Platform of any results garnered by Qualified Researchers before submission for publication but only to prevent public release of Personal Information or other violations of law.
- (c) No cause of action under state or federal law relating to or arising solely from the release of data to Qualified Researchers may be brought against any Qualified Platform that complies with this Act and the privacy and cybersecurity provisions described herein.

**SEC. 5. Obligations and Immunity for Qualified Researchers**

- (a) Qualified Researchers shall be actively engaged in conducting research under a research plan, which was approved by the Division or its appropriate delegate based on its assessment of (1) the intellectual merit of the project (i.e. its potential to advance understanding the impact of large digital communication platforms on society); and (2) its broader impacts (i.e. the project’s benefit to society).

- (b) Each Qualified Researcher shall comply with
  - (1) applicable federal, state, and local information sharing and privacy laws and regulations as well as all rules, standards, regulations, and orders issued by the FTC pursuant to this Act which are applicable to their own actions and conduct; and
  - (2) a prohibition on any attempt to reidentify, access, or publish Personal Information based on Qualified Data and Information that a Qualified Researcher may receive.
- (c) No cause of action arising solely from Qualified Researchers' access and use of Qualified Data and Information may be brought against Qualified Researchers who conduct Qualified Research Projects in compliance with this Act and abide by all information sharing and privacy standards described in (a). This immunity includes immunity from potential liability under applicable federal, state, and local laws, as well as any potential liability for a violation of a Platform's Terms of Service that arises solely from the Qualified Researchers' access and use of Qualified Data and Information.

**SEC. 6. Sharing of Qualified Data and Information by Qualified Platforms**

- (a) The Commission shall prescribe regulations requiring that Qualified Platforms maintain and provide Qualified Researchers access to Qualified Data and Information and accurate records of Users' interactions with or exposure to Qualified Data and Information.
- (b) Qualified Platforms will be required to provide Qualified Researchers access to Qualified Data and Information as prescribed by regulation;
- (c) No Qualified Platforms shall be required to create or preserve records that they would not otherwise create or preserve. Qualified Platforms must enable Qualified Researchers to preserve access to Qualified Data and Information as necessary to carry out and replicate Qualified Research Projects.
- (d) The Commission shall also issue regulations requiring that Qualified Platforms, through posting of notices or other appropriate means, keep Users informed of their privacy protections and the information that the Qualified Platform is required to share with Qualified Researchers under this Act.
- (e) Any Qualified Data and Information obtained or provided under this Act shall be obtained with a minimum burden upon the Qualified Platform, although Qualified Platforms may not shift the cost of their compliance with this Act to the Qualified Researchers. Unnecessary duplication of efforts in obtaining information shall be reduced to the extent feasible.
- (f) Qualified Researchers are authorized to compile and analyze Qualified Data and Information under this section and are required to make all reports created from that analysis freely available to the public in both summary and detailed form.
- (g) Twenty (20) business days prior to public release of an analysis by a Qualified Researcher based on Qualified Data and Information or at a time designated by the Division, the Qualified Researcher shall submit a pre-publication version of their research to the Qualified Platforms

and the Division for evaluation to confirm that the analysis does not expose Personal Information.

- (1) Qualified Platforms may object to the publication or release of any analysis that will necessarily expose Personal Information or otherwise violate federal, state, and local information sharing and privacy laws and regulations or any applicable rules, standards, regulations, and orders issued by the FTC. Such objections must be made in writing to the Division or its delegate within ten (10) business days of the date that the Qualified Researcher submitted the pre-publication version of the research or at a time specified by the Division. Such objections shall include proposed changes to the publication to address the legal problems identified.
  - (2) If no objection is timely made by a Qualified Platform or the Division, the publication may continue.
  - (3) If objection is timely made by a Qualified Platform, the Qualified Researcher will have ten (10) business days to modify the publication and re-submit it to the Division, who shall decide within ten (10) business days whether the publication complies with the Act. If the Division finds that the publication does not comply with the Act, the Qualified Researcher may appeal such finding to the U.S. Court of Appeals for the Federal Circuit.
- (h) The Commission shall have the authority to make, amend, and rescind, in the manner prescribed by 5 U.S.C. § 553, such rules and regulations as it may deem necessary to carry out its responsibilities under this Act.
- (i) Access to Qualified Data and Information shall not be granted to any Qualified Research Project pursuant to this statute if it has not been approved or deemed exempt by an Institutional Review Board at the researcher's affiliated university.

#### **SEC. 7. Scraping of Data from Qualified Platforms for University-Affiliated Research**

- (a) Any university-affiliated researcher conducting research that has been approved or deemed exempt by an Institutional Review Board at the researcher's affiliated university shall be immune from civil or criminal liability for the scraping of data made available through the user interface on Qualified Platforms, regardless of whether the researcher is a Qualified Researcher or the research project is a Qualified Research Project.
- (b) Researchers who meet the requirements in (a) and abide by the prohibitions in (b) are not required to notify Qualified Platforms about Scraping practices, and no cause of action may be brought against Qualified Researchers arising from Scraping practices that comply with this section and such conduct shall be deemed authorized conduct for purposes of the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. 1030.

#### **SEC. 8. Platform Transparency and Accountability Division**

- (a) It is the purpose of this section to enable and approve Qualified Researchers to carry out the types of Qualified Research Projects set forth in this Act.

- (b) There is hereby established within the Commission a Platform Transparency and Accountability Division. The Division shall be headed by a Director who shall be appointed by the Commission Chair, with the approval of a majority of the Commissioners, and who shall serve for a term of four years unless previously removed by the Chair.
- (c) The Division is authorized to develop and establish recommended standards, criteria, and approval process for Qualified Researchers, Qualified Research Projects, Qualified Data and Information, and Qualified Platforms under the processes for notice and comment rulemaking in 5 U.S.C. § 553.
- (d) The Division shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of its criteria for identifying Qualified Researchers, Qualified Research Projects, Qualified Data and Information, and Qualified Platforms. Qualified Researchers may suggest platforms for inclusion. Such criteria shall not include consideration of political views, race, gender, gender identity, ethnicity, sexual orientation, age, or disability, although they may express preference for projects proposed by residents of the United States. No person may be qualified as a Qualified Researcher if they act as an Agent of a foreign power as defined by 50 U.S.C. § 1801.
- (e) The Division is authorized to inspect data and question Qualified Platforms about the Qualified Data and Information they are making available to the Commission and to Qualified Researchers.
- (f) The Director may issue formal written guidance to persons subject to the Act, provided that the Director shall publish all such guidance within six months of its issuance, with the names of the parties and any trade secret or other confidential information redacted.
- (g) In addition to any authority vested in the Division by other provisions of this section, the Director, in carrying out the functions of the Division, is authorized to
  - (1) prescribe such regulations as the Director deems necessary governing the manner in which its functions shall be carried out;
  - (2) convene an advisory board from relevant Qualified Platforms and Qualified Researchers;
  - (3) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Division and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;
  - (4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;
  - (5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;
  - (6) delegate an appropriate entity or independent agency, such as the National Science Foundation (NSF), to assist the Division with carrying out its obligations to appraise Qualified Platforms, Qualified Data and Information, Qualified Researchers, and Qualified Research Projects;

- (7) accept and utilize the services of voluntary and non-compensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;
  - (8) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;
  - (9) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3324 (a) and (b) of Title 31; and
  - (10) make other necessary expenditures.
- (h) The Director shall submit to the Chair, to the President, and to the Congress an annual report of the operations of the Division under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as the Director deems appropriate.

#### **SEC. 8. Enforcement**

- (a) Qualified Researchers who intentionally violate information sharing and privacy standards described in (a) shall be subject to both civil and criminal enforcement, under applicable federal, state, and local laws.
- (b) The Commission is hereby empowered and directed to enforce the provisions of this Act, and violations of this Act by a Qualified Platform shall be deemed an unfair trade practice within the meaning of 15 U.S.C. § 45(a)(4).
- (c) Whenever the Commission shall have reason to believe that a Qualified Platform has been or is in violation of any provision of this Act, the Commission may commence a civil action in a district court of the United States for an injunction against the Qualified Platform that the Commission believes has violated this Act. Remedies in an injunctive action brought by the Commission are limited to an order enjoining, restraining, or preventing any act or practice that constitutes a violation of this Act and imposing a civil penalty of up to [\$10,000] for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States.
- (d) In the event any enforcement action is appealed, the prevailing party in the action may, in the discretion of the court, recover the costs of the action including reasonable investigative costs and attorneys' fees.