

116TH CONGRESS  
2D SESSION

# S. 4337

To amend the Communications Act of 1934 to stop granting immunity subsidies to companies that engage in behavioral advertising, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28, 2020

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Communications Act of 1934 to stop granting immunity subsidies to companies that engage in behavioral advertising, 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 “Behavioral Advertising  
5 Decisions Are Downgrading Services Act” or the “BAD  
6 ADS Act”.

1 **SEC. 2. LIMITATION ON IMMUNITY.**

2 (a) IN GENERAL.—Section 230(c) of the Communica-  
3 tions Act of 1934 (47 U.S.C. 230(c)) is amended by add-  
4 ing at the end the following:

5 “(3) LIMITATION ON PROTECTION.—

6 “(A) DEFINITIONS.—In this paragraph—

7 “(i) the term ‘advertisement server’  
8 means a person that serves or delivers ad-  
9 vertisements to a user of a website, online  
10 service, online application, or mobile appli-  
11 cation;

12 “(ii) the term ‘behavioral adver-  
13 tising’—

14 “(I) means a form of advertising  
15 in which an advertisement is displayed  
16 to a user of an interactive computer  
17 service based on—

18 “(aa) the personal traits of  
19 the user;

20 “(bb) previous location in-  
21 formation with respect to the  
22 user;

23 “(cc) personal information  
24 from a profile about the user  
25 that is created for the purpose of  
26 selling advertisements; or

1 “(dd) the previous online or  
2 offline behavior of the user; and

3 “(II) does not include contextual  
4 advertising, such as advertising that is  
5 directed to a user based on—

6 “(aa) the content of the  
7 website, online service, online ap-  
8 plication, or mobile application to  
9 which the user is connected;

10 “(bb) the location of the  
11 user, as of the time at which the  
12 advertising is directed to the  
13 user; or

14 “(cc) the search terms that  
15 the user applied to arrive at the  
16 website, service, or application to  
17 which the user is connected; and

18 “(iii) the term ‘covered provider’—

19 “(I) means an entity that—

20 “(aa) provides an interactive  
21 computer service—

22 “(AA) through a  
23 website, online application,  
24 or mobile application (in-  
25 cluding a single interactive

1 computer service that is pro-  
2 vided through more than 1  
3 such website or application);

4 “(BB) through which  
5 information provided by an-  
6 other information content  
7 provider is distributed; and

8 “(CC) that, in any  
9 month during the most re-  
10 cently completed 12-month  
11 period, more than  
12 30,000,000 users in the  
13 United States (or more than  
14 300,000,000 users world-  
15 wide) accessed, without re-  
16 gard to the means by which  
17 the users accessed the serv-  
18 ice; and

19 “(bb) during the most re-  
20 cently completed taxable year,  
21 had more than \$1,500,000,000 in  
22 global revenue; and

23 “(II) does not include an organi-  
24 zation described in section 501(c) of  
25 the Internal Revenue Code of 1986

1                   that is exempt from taxation under  
2                   section 501(a) of such Code.

3                   “(B) APPLICABILITY.—The protections  
4                   provided under paragraphs (1) and (2) shall not  
5                   apply with respect to a covered provider for any  
6                   claim arising during the 30-day period begin-  
7                   ning on the date on which the covered pro-  
8                   vider—

9                   “(i) displays behavioral advertising to  
10                  a user of the interactive computer service  
11                  described in subparagraph (A)(iii)(I)(aa)  
12                  provided by the covered provider; or

13                  “(ii) provides data regarding a user of  
14                  the interactive computer service described  
15                  in clause (i) to another person knowing  
16                  that the other person will use that data to  
17                  create or display behavioral advertising.

18                  “(C) LIABILITY OF ADVERTISEMENT SERV-  
19                  ERS IN PLACE OF COVERED PROVIDERS.—An  
20                  advertisement server shall be held liable for any  
21                  claim brought against a covered provider be-  
22                  cause of the application of subparagraph (B) if,  
23                  after the covered provider directs the advertise-  
24                  ment server not to serve or deliver behavioral  
25                  advertising to users of the interactive computer

1 service described in subparagraph (A)(iii)(I)(aa)  
2 provided by the covered provider (or if the ad-  
3 vertisement server fails to provide reasonably  
4 accessible means to receive that direction from  
5 the covered provider), the covered provider un-  
6 knowingly takes the action described in sub-  
7 paragraph (B)(i) because of an action taken by  
8 the advertisement server, including the failure  
9 of the advertisement server to provide the cov-  
10 ered provider with a conspicuous disclosure re-  
11 garding the category of advertisements to be  
12 displayed.”.

13 (b) EFFECTIVE DATE.—This section, and the amend-  
14 ments made by this section, shall take effect on the date  
15 that is 180 days after the date of enactment of this Act.

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