116TH CONGRESS
2D SESSION

S. _____

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

_____

IN THE SENATE OF THE UNITED STATES

_____

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on _____

_____

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.