

117TH CONGRESS
1ST SESSION

H. R. 5696

To provide for certain requirements for the collection, transmission, processing, or disclosure of camera or microphone data by the manufacturer of an internet-connected device or developer of an application installed on such a device, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 2021

Mr. JACOBS of New York (for himself, Mr. CASE, and Mr. RUTHERFORD) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide for certain requirements for the collection, transmission, processing, or disclosure of camera or microphone data by the manufacturer of an internet-connected device or developer of an application installed on such a device, 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 “Prevent Recording of
5 Individuals with Video and Audio Technologies when not
6 Enabled Act” or the “PRIVATE Act”.

1 **SEC. 2. TREATMENT OF CAMERA AND MICROPHONE DATA**
2 **BY INTERNET-CONNECTED DEVICES AND AP-**
3 **PLICATIONS.**

4 (a) PROHIBITION.—

5 (1) IN GENERAL.—A covered entity may not
6 collect any data using the camera or microphone of
7 a covered device of an individual, cause any data so
8 collected to be transmitted from the device, or proc-
9 ess or disclose to another person any data so col-
10 lected, unless—

11 (A) the collection, transmission, proc-
12 essing, or disclosure is consistent with reason-
13 able consumer expectations within the context
14 of the interaction between the covered entity
15 and the individual; or

16 (B) the covered entity obtains the express,
17 affirmative consent of the individual to the col-
18 lection, transmission, processing, or disclosure
19 in the manner required by subsection (b).

20 (2) REASONABLE CONSUMER EXPECTATIONS.—

21 For purposes of paragraph (1)(A), the collection,
22 transmission, processing, or disclosure of data is not
23 consistent with reasonable consumer expectations
24 if—

25 (A) the collection, transmission, proc-
26 essing, or disclosure is not reasonably required

1 for the functionality of the covered device man-
2 ufactured by the covered entity or the covered
3 application developed by the covered entity (as
4 the case may be); or

5 (B) the data is collected, transmitted, or
6 processed (regardless of whether the processing
7 occurs on the covered device or on the systems
8 of the covered entity) when the individual is not
9 actively using the covered device or covered ap-
10 plication (as the case may be).

11 (b) REQUIREMENTS FOR OBTAINING EXPRESS, AF-
12 FIRMATIVE CONSENT.—

13 (1) IN GENERAL.—To obtain the express, af-
14 firmative consent of an individual to the collection of
15 data using the camera or microphone of a covered
16 device of the individual, the causing of any data so
17 collected to be transmitted from the device, or the
18 processing or disclosure to another person of any
19 data so collected, a covered entity shall—

20 (A) provide to the individual a brief notice
21 of the collection, transmission, processing, or
22 disclosure that meets the requirements of para-
23 graph (2); and

24 (B) obtain an affirmative response from
25 the individual indicating that the individual

1 consents to the collection, transmission, proc-
2 essing, or disclosure.

3 (2) BRIEF NOTICE.—The brief notice required
4 by paragraph (1)(A) shall—

5 (A) briefly describe the collection, trans-
6 mission, processing, or disclosure for which con-
7 sent is sought;

8 (B) be provided in a conspicuous manner;

9 (C) be separate from any other privacy
10 policy or terms or conditions relating to the cov-
11 ered device or covered application;

12 (D) be in plain language;

13 (E) be provided—

14 (i) in the case of a covered device that
15 has a screen (or a covered application in-
16 stalled on a covered device that has a
17 screen)—

18 (I) in the form of text displayed
19 on the screen; and

20 (II) if the individual so chooses,
21 in spoken form; and

22 (ii) in the case of a covered device
23 that does not have a screen (or a covered
24 application installed on a covered device
25 that does not have a screen)—

1 (I) in spoken form; and
2 (II) if the individual so chooses,
3 in an alternative form that is acces-
4 sible to individuals with a hearing im-
5 pairment; and

6 (F) clearly and conspicuously direct the in-
7 dividual to a website on which the individual
8 may access the privacy policy required by para-
9 graph (3).

10 (3) PRIVACY POLICY FOR CAMERA AND MICRO-
11 PHONE DATA.—A covered entity that collects any
12 data using the camera or microphone of a covered
13 device of an individual, causes any data so collected
14 to be transmitted from the device, or processes or
15 discloses to another person any data so collected,
16 shall maintain on a publicly available website a pri-
17 vacy policy that describes in detail, but using plain
18 language, the collection, transmission, processing, or
19 disclosure, including the purposes of the collection,
20 transmission, processing, or disclosure. The privacy
21 policy shall be separate from any other privacy pol-
22 icy or terms or conditions relating to the covered de-
23 vice or covered application and shall be displayed in
24 a conspicuous manner on the website.

25 (c) VOICE-ACTIVATED FUNCTIONALITY.—

1 (1) IN GENERAL.—Notwithstanding subsection

2 (a)(1)(A)—

3 (A) if the covered device of an individual
4 has voice-activated functionality, the covered
5 entity that manufactured the covered device
6 may not, in connection with such functionality,
7 collect any data using the camera or micro-
8 phone of the covered device, cause any data so
9 collected to be transmitted from the device, or
10 process or disclose to another person any data
11 so collected, unless, before such functionality is
12 activated, the covered entity obtains the ex-
13 press, affirmative consent of the individual to
14 the collection, transmission, processing, or dis-
15 closure; and

16 (B) if a covered application installed on
17 the covered device of an individual has voice-ac-
18 tivated functionality, the covered entity that de-
19 veloped the covered application may not, in con-
20 nection with such functionality, collect any data
21 using the camera or microphone of the covered
22 device, cause any data so collected to be trans-
23 mitted from the device, or process or disclose to
24 another person any data so collected, unless, be-
25 fore such functionality is activated, the covered

1 entity obtains the express, affirmative consent
2 of the individual to the collection, transmission,
3 processing, or disclosure.

4 (2) REQUIREMENTS.—The express, affirmative
5 consent required by paragraph (1) shall be obtained
6 in the manner required by subsection (b), except
7 that the brief notice required by subparagraph (A)
8 of paragraph (1) of such subsection and the affirma-
9 tive response required by subparagraph (B) of such
10 paragraph shall be specific to the collection, trans-
11 mission, processing, or disclosure of data in connec-
12 tion with the voice-activated functionality and sepa-
13 rate from the notice provided and response obtained
14 under such subparagraphs with respect to the collec-
15 tion, transmission, processing, or disclosure of data
16 not in connection with such functionality.

17 (d) STATUS OF CONSENT; REVOCATION.—A covered
18 entity shall provide a convenient means, on the covered
19 device manufactured by the covered entity or within the
20 covered application developed by the covered entity (as the
21 case may be), for an individual—

22 (1) to revoke any consent provided under this
23 section to the collection, transmission, processing, or
24 disclosure of data; and

1 (2) to view whether the individual has provided
2 or revoked any such consent.

3 (e) FEDERAL TRADE COMMISSION GUIDANCE; SAFE
4 HARBOR.—

5 (1) GUIDANCE.—The Commission shall issue
6 guidance containing examples of language for the
7 brief notice required by subsection (b)(1)(A) (includ-
8 ing text and spoken versions) and the privacy policy
9 required by subsection (b)(3).

10 (2) SAFE HARBOR.—

11 (A) SUBMISSION OF BRIEF NOTICE OR PRI-
12 VACY POLICY TO COMMISSION.—A covered enti-
13 ty may submit to the Commission for approval
14 a brief notice that the covered entity intends to
15 use to comply with subsection (b)(1)(A) or a
16 privacy policy that the covered entity intends to
17 use to comply with subsection (b)(3) with re-
18 spect to the collection, transmission, processing,
19 or disclosure of data. The covered entity shall
20 include with the submission such information as
21 the Commission may require about the collec-
22 tion, transmission, processing, or disclosure, as
23 the Commission considers necessary to evaluate
24 the adequacy of the brief notice or privacy pol-
25 icy.

1 (B) APPROVAL OR REJECTION.—Not later
2 than 120 days after receiving a brief notice or
3 privacy policy from a covered entity under sub-
4 paragraph (A), the Commission shall approve or
5 reject the brief notice or privacy policy and in-
6 form the covered entity of the approval or rejec-
7 tion.

8 (C) EFFECT.—If the Commission approves
9 a brief notice or privacy policy under subpara-
10 graph (B), the brief notice or privacy policy
11 shall be considered to meet the requirements of
12 subsection (b)(1)(A) or (b)(3), respectively, with
13 respect to the collection, transmission, proc-
14 essing, or disclosure of data to which the brief
15 notice or privacy policy relates, to the extent
16 the covered entity conducts the collection,
17 transmission, processing, or disclosure in a
18 manner that is consistent in all material re-
19 spects with the information provided to the
20 Commission under subparagraph (A).

21 (f) ENFORCEMENT BY FEDERAL TRADE COMMIS-
22 SION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
24 TICES.—A violation of this section or a regulation
25 promulgated under this section shall be treated as a

1 violation of a regulation under section 18(a)(1)(B)
2 of the Federal Trade Commission Act (15 U.S.C.
3 57a(a)(1)(B)) regarding unfair or deceptive acts or
4 practices.

5 (2) POWERS OF COMMISSION.—The Commis-
6 sion shall enforce this section and the regulations
7 promulgated under this section in the same manner,
8 by the same means, and with the same jurisdiction,
9 powers, and duties as though all applicable terms
10 and provisions of the Federal Trade Commission Act
11 (15 U.S.C. 41 et seq.) were incorporated into and
12 made a part of this section. Any person who violates
13 this section or a regulation promulgated under this
14 section shall be subject to the penalties and entitled
15 to the privileges and immunities provided in the
16 Federal Trade Commission Act.

17 (g) RULEMAKING.—The Commission may promul-
18 gate regulations under section 553 of title 5, United
19 States Code, to implement this section.

20 (h) DEFINITIONS.—In this section:

21 (1) COMMISSION.—The term “Commission”
22 means the Federal Trade Commission.

23 (2) COVERED APPLICATION.—The term “cov-
24 ered application” means a software application that
25 is designed to be installed on a covered device.

1 (3) COVERED DEVICE.—The term “covered de-
2 vice” means a device that—

3 (A) is capable of connecting to the inter-
4 net, either directly or indirectly through a net-
5 work;

6 (B) has computer processing capabilities
7 for collecting, transmitting, or otherwise proc-
8 essing data; and

9 (C) has a camera or microphone.

10 (4) COVERED ENTITY.—The term “covered en-
11 tity” means—

12 (A) a manufacturer of a covered device;
13 and

14 (B) a developer of a covered application.

15 (5) VOICE-ACTIVATED FUNCTIONALITY.—The
16 term “voice-activated functionality” means a
17 functionality of a covered device or covered applica-
18 tion that—

19 (A) allows an individual to control the cov-
20 ered device or covered application using voice
21 commands; and

22 (B) uses the microphone of the covered de-
23 vice being controlled, or the microphone of the
24 covered device on which the covered application
25 being controlled is installed, to listen for such

1 commands when the individual is not actively
2 using the covered device or covered application,
3 respectively.

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