

117TH CONGRESS
1ST SESSION

H. R. 1090

To require software marketplace operators and developers of covered foreign software to provide to consumers a warning prior to the download of such software, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 2021

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

A BILL

To require software marketplace operators and developers of covered foreign software to provide to consumers a warning prior to the download of such software, 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 “Online Consumer Pro-
5 tection Act of 2021”.

1 **SEC. 2. CONSUMER WARNING AND ACKNOWLEDGMENT FOR**
2 **DOWNLOAD OF COVERED FOREIGN SOFT-**
3 **WARE.**

4 (a) IN GENERAL.—A software marketplace operator
5 or developer of covered foreign software may not—

6 (1) permit a consumer to download covered for-
7 eign software unless, before the download begins—

8 (A) a warning that meets the requirements
9 of subsection (b) is displayed to the consumer,
10 separately from any privacy policy, terms of
11 service, or other notice; and

12 (B) the consumer is required to choose (by
13 taking an affirmative step such as clicking on
14 a button) between the options of—

15 (i) acknowledging such warning and
16 proceeding with the download; or

17 (ii) cancelling the download; or

18 (2) make available covered foreign software for
19 download by consumers unless the operator or devel-
20 oper has in place procedures to ensure compliance
21 with paragraph (1).

22 (b) REQUIREMENTS FOR WARNING.—

23 (1) IN GENERAL.—A warning meets the re-
24 quirements of this subsection if such warning reads
25 as follows (with the italicized language being re-
26 placed and the other bracketed language being in-

1 cluded or deleted, as appropriate for the covered for-
 2 eign software regarding which the warning is being
 3 given, and the brackets removed): “Warning: [*Name*
 4 *of Covered Foreign Software*] is developed by [*Name*
 5 *of Developer of Covered Foreign Software*], which [is
 6 controlled by a company that] [is organized under
 7 the laws of]/[conducts its principal operations in]/[is
 8 organized under the laws of and conducts its prin-
 9 cipal operations in] [*Name of Covered Country*].
 10 Please either [*insert description of how to acknowl-*
 11 *edge the warning and proceed with the download*] if
 12 you wish to proceed with the download or [*insert de-*
 13 *scription of how to cancel the download*] if you wish
 14 to cancel the download.”.

15 (2) ALTERNATIVE WARNINGS.—The Commis-
 16 sion may by regulation specify that a warning other
 17 than the warning provided in paragraph (1) meets
 18 the requirements of this subsection, as the Commis-
 19 sion considers appropriate.

20 (c) LIABILITY OF SOFTWARE DEVELOPER.—In the
 21 case of a violation of subsection (a) by a software market-
 22 place operator, if the developer of the covered foreign soft-
 23 ware with respect to which the violation was committed
 24 did not inform the software marketplace operator that the
 25 software is covered foreign software, the developer (as well

1 as the software marketplace operator) shall be considered
2 to have committed the violation.

3 (d) ENFORCEMENT BY FEDERAL TRADE COMMIS-
4 SION.—

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

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

1 (3) REGULATIONS.—The Commission may pro-
2 mulgate regulations under section 553 of title 5,
3 United States Code, to carry out this section.

4 (e) CRIMINAL OFFENSE.—

5 (1) CORPORATE OFFENSE.—Whoever, being a
6 software marketplace operator or developer of cov-
7 ered foreign software, knowingly violates subsection
8 (a) shall be fined \$50,000 for each violation.

9 (2) INDIVIDUAL OFFENSE.—Whoever, being an
10 officer of a software marketplace operator or devel-
11 oper of covered foreign software, causes a violation
12 of subsection (a) with the intent to conceal the coun-
13 try in which software is developed, shall be fined
14 under title 18, United States Code, imprisoned not
15 more than 2 years, or both.

16 (3) APPLICATION.—This subsection shall apply
17 with respect to conduct occurring during the period
18 beginning on the date of enactment of this Act and
19 ending on the date on which this section ceases to
20 have any force or effect under subsection (g).

21 (f) REPORT TO CONGRESS.—Not later than 8 years
22 after the date of the enactment of this Act, the Commis-
23 sion, in consultation with the Attorney General, shall sub-
24 mit to Congress a report on the implementation and en-
25 forcement of this section.

1 (g) SUNSET.—This section shall cease to have any
2 force or effect on the date that is 10 years after the date
3 of the enactment of this Act.

4 (h) DEFINITIONS.—In this section:

5 (1) COMMISSION.—The term “Commission”
6 means the Federal Trade Commission.

7 (2) COVERED COUNTRY.—

8 (A) IN GENERAL.—The term “covered
9 country” means—

10 (i) China, Russia, North Korea, Iran,
11 Syria, and Cuba;

12 (ii) any other country the government
13 of which the Secretary of State determines
14 has repeatedly provided support for inter-
15 national terrorism pursuant to—

16 (I) section 1754(c)(1)(A) of the
17 Export Control Reform Act of 2018
18 (50 U.S.C. 4318(c)(1)(A));

19 (II) section 620A of the Foreign
20 Assistance Act of 1961 (22 U.S.C.
21 2371);

22 (III) section 40 of the Arms Ex-
23 port Control Act (22 U.S.C. 2780); or

24 (IV) any other provision of law;
25 and

1 (iii) subject to subparagraph (B), any
2 other country designated by the Attorney
3 General or the Commission based on ex-
4 pert knowledge of the sources of dangerous
5 software.

6 (B) PROCESS.—

7 (i) DESIGNATION.—Upon designating
8 a country under subparagraph (A)(iii), the
9 Attorney General or the Commission (in
10 this clause referred to as the “notifying
11 party”) shall transmit a notification of the
12 designation to the Commission or the At-
13 torney General, as the case may be (in this
14 clause referred to as the “notified party”).
15 Such designation shall become effective on
16 the day that is 30 days after the date on
17 which such notification is transmitted, un-
18 less, before such day, the notified party
19 transmits to the notifying party and the
20 Secretary of State an objection. The Sec-
21 retary shall, not later than 30 days after
22 the date on which the Secretary receives
23 such objection, determine whether to des-
24 ignate such country under such subpara-
25 graph.

1 (ii) REVOCATION OF DESIGNATION.—

2 (I) JOINT ACTION REQUIRED.—

3 Except as provided in subclause (II),
4 the designation of a country under
5 subparagraph (A)(iii) may only be re-
6 voked by the Attorney General and
7 the Commission, acting jointly.

8 (II) DISPUTE RESOLUTION.—In
9 the case of a dispute between the At-
10 torney General and the Commission
11 regarding whether to revoke the des-
12 ignation of a country under subpara-
13 graph (A)(iii), the Attorney General
14 or the Commission may transmit to
15 the Secretary of State a notification
16 of such dispute. The Secretary shall,
17 not later than 30 days after the date
18 on which the Secretary receives such
19 notification, determine whether to re-
20 voke such designation.

21 (3) COVERED FOREIGN SOFTWARE.—The term
22 “covered foreign software” means software that is
23 developed by—

24 (A) a person (other than an individual)—

1 (i) who is organized under the laws of
2 a covered country; or

3 (ii) whose principal operations are
4 conducted in a covered country; or

5 (B) a person (other than an individual)
6 that is, directly or indirectly, controlled by a
7 person described in subparagraph (A).

8 (4) MOBILE APPLICATION.—The term “mobile
9 application” means a software program that runs on
10 the operating system of a smartphone, tablet com-
11 puter, or similar mobile electronic device.

12 (5) SOFTWARE.—The term “software” means
13 any computer software program, including a mobile
14 application.

15 (6) SOFTWARE MARKETPLACE OPERATOR.—
16 The term “software marketplace operator” means a
17 person who, for a commercial purpose, operates an
18 online store or marketplace through which software
19 is made available for download by consumers.

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