

# 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 given, and the brackets removed): "Warning: [Name 3 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.".

- (2) ALTERNATIVE WARNINGS.—The Commission may by regulation specify that a warning other than the warning provided in paragraph (1) meets the requirements of this subsection, as the Commission 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

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

### (e) Criminal Offense.—

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- (1) Corporate offense.—Whoever, being a software marketplace operator or developer of covered foreign software, knowingly violates subsection (a) shall be fined \$50,000 for each violation.
- (2) Individual offense.—Whoever, being an officer of a software marketplace operator or developer of covered foreign software, causes a violation of subsection (a) with the intent to conceal the country in which software is developed, shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.
- (3) APPLICATION.—This subsection shall apply with respect to conduct occurring during the period beginning on the date of enactment of this Act and ending on the date on which this section ceases to 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

(iii) subject to subparagraph (B), any other country designated by the Attorney General or the Commission based on expert knowledge of the sources of dangerous software.

#### (B) Process.—

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(i) Designation.—Upon designating a country under subparagraph (A)(iii), the Attorney General or the Commission (in this clause referred to as the "notifying party") shall transmit a notification of the designation to the Commission or the Attorney General, as the case may be (in this clause referred to as the "notified party"). Such designation shall become effective on the day that is 30 days after the date on which such notification is transmitted, unless, before such day, the notified party transmits to the notifying party and the Secretary of State an objection. The Secretary shall, not later than 30 days after the date on which the Secretary receives such objection, determine whether to designate such country under such subparagraph.

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 or
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.