AMENDMENT TO RULES COMMITTEE PRINT 116–

57

OFFERED BY MR. BANKS OF INDIANA

At the end of subtitle E of title XVII, add the following new section:

1 **SEC. 1762. CONSUMER WARNING AND ACKNOWLEDGMENT**

2 **FOR DOWNLOAD OF COVERED FOREIGN**

3 **SOFTWARE.**

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

1 (2) make available covered foreign software for

2 download by consumers unless the operator or devel-

3 oper has in place procedures to ensure compliance

4 with paragraph (1).

5 (b) REQUIREMENTS FOR WARNING.—

6 (1) IN GENERAL.—A warning meets the re-

7 quirements of this subsection if such warning reads

8 as follows (with the italicized language being re-

9 placed and the other bracketed language being in-

10 cluded or deleted, as appropriate for the covered for-

11 eign software regarding which the warning is being

12 given, and the brackets removed): "Warning: [*Name*

13 *of Covered Foreign Software*] is developed by [*Name*

14 *of Developer of Covered Foreign Software*], which [is

15 controlled by a company that] [is organized under

16 the laws of]/[conducts its principal operations in]/[is

17 organized under the laws of and conducts its prin-

18 cipal operations in] [*Name of Covered Country*].

19 Please either [*insert description of how to acknowl-*

20 *edge the warning and proceed with the download*] if

21 you wish to proceed with the download or [*insert de-*

22 *scription of how to cancel the download*] if you wish

23 to cancel the download.".

24 (2) ALTERNATIVE WARNINGS.—The Commis-

25 sion may by regulation specify that a warning other

1 than the warning provided in paragraph (1) meets

2 the requirements of this subsection, as the Commis-

3 sion considers appropriate.

4 (c) LIABILITY OF SOFTWARE DEVELOPER.—In the

5 case of a violation of subsection (a) by a software market-

6 place operator, if the developer of the covered foreign soft-

7 ware with respect to which the violation was committed

8 did not inform the software marketplace operator that the

9 software is covered foreign software, the developer (as well

10 as the software marketplace operator) shall be considered

11 to have committed the violation.

12 (d) ENFORCEMENT BY FEDERAL TRADE COMMIS-

13 SION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-

15 TICES.—A violation of this section or a regulation

16 promulgated under this section shall be treated as a

17 violation of a regulation under section 18(a)(1)(B)

18 of the Federal Trade Commission Act (15 U.S.C.

19 57a(a)(1)(B)) regarding unfair or deceptive acts or

20 practices.

21 (2) POWERS OF COMMISSION.—The Commis-

22 sion shall enforce this section and the regulations

23 promulgated under the section in the same manner,

24 by the same means, and with the same jurisdiction,

25 powers, and duties as though all applicable terms

1 and provisions of the Federal Trade Commission Act

2 (15 U.S.C. 41 et seq.) were incorporated into and

3 made a part of this Act. Any person who violates

4 this section or a regulation promulgated under this

5 section shall be subject to the penalties and entitled

6 to the privileges and immunities provided in the

7 Federal Trade Commission Act.

8 (3) REGULATIONS.—The Commission may pro-

9 mulgate regulations under section 553 of title 5,

10 United States Code, to carry out this section.

11 (e) CRIMINAL OFFENSE.—

12 (1) CORPORATE OFFENSE.—Whoever, being a

13 software marketplace operator or developer of cov-

14 ered foreign software, knowingly violates subsection

15 (a) shall be fined $50,000 for each violation.

16 (2) INDIVIDUAL OFFENSE.—Whoever, being an

17 officer of a software marketplace operator or devel-

18 oper of covered foreign software, causes a violation

19 of subsection (a) with the intent to conceal the coun-

20 try in which software is developed, shall be fined

21 under title 18, United States Code, imprisoned not

22 more than 2 years, or both.

23 (3) APPLICATION.—This subsection shall apply

24 with respect to conduct occurring during the period

25 beginning on the date of enactment of this Act and

1   ending on the date on which this section ceases to

2   have any force or effect under subsection (g).

3   (f) REPORT TO CONGRESS.—Not later than 8 years

4 after the date of the enactment of this Act, the Commis-

5 sion, in consultation with the Attorney General, shall sub-

6 mit to Congress a report on the implementation and en-

7 forcement of this section.

8   (g) SUNSET.—This section shall cease to have any

9 force or effect on the date that is 10 years after the date

10 of the enactment of this Act.

11   (h) DEFINITIONS.—In this section:

12   (1) COMMISSION.—The term "Commission"

13   means the Federal Trade Commission.

14   (2) COVERED COUNTRY.—

15   (A) IN GENERAL.—The term "covered

16   country" means—

17   (i) China, Russia, North Korea, Iran,

18   Syria, and Sudan;

19   (ii) any other country the government

20   of which the Secretary of State determines

21   has repeatedly provided support for inter-

22   national terrorism pursuant to—

23   (I) section 1754(c)(1)(A) of the

24   Export Control Reform Act of 2018

25   (50 U.S.C. 4318(c)(1)(A));

1   (II) section 620A of the Foreign

2   Assistance Act of 1961 (22 U.S.C.

3   2371);

4   (III) section 40 of the Arms Ex-

5   port Control Act (22 U.S.C. 2780); or

6   (IV) any other provision of law;

7   (iii) subject to subparagraph (B), any

8   other country designated by the Attorney

9   General or the Commission based on ex-

10   pert knowledge of the sources of dangerous

11   software; and

12   (iv) any other country that the Sec-

13   retary of Defense determines to pose sig-

14   nificant national security concerns.

15   (B) PROCESS.—

16   (i) DESIGNATION.—Upon designating

17   a country under subparagraph (A)(iii), the

18   Attorney General or the Commission (in

19   this clause referred to as the ''notifying

20   party'') shall transmit a notification of the

21   designation to the Commission or the At-

22   torney General, as the case may be (in this

23   clause referred to as the ''notified party'').

24   Such designation shall become effective on

25   the day that is 30 days after the date on

1 which such notification is transmitted, un-

2 less, before such day, the notified party

3 transmits to the notifying party and the

4 Secretary of State an objection. The Sec-

5 retary shall, not later than 30 days after

6 the date on which the Secretary receives

7 such objection, determine whether to des-

8 ignate such country under such subpara-

9 graph.

10 (ii) REVOCATION OF DESIGNATION.—

11 (I) JOINT ACTION REQUIRED.—

12 Except as provided in subclause (II),

13 the designation of a country under

14 subparagraph (A)(iii) may only be re-

15 voked by the Attorney General and

16 the Commission, acting jointly.

17 (II) DISPUTE RESOLUTION.—In

18 the case of a dispute between the At-

19 torney General and the Commission

20 regarding whether to revoke the des-

21 ignation of a country under subpara-

22 graph (A)(iii), the Attorney General

23 or the Commission may transmit to

24 the Secretary of State a notification

25 of such dispute. The Secretary shall,

1 not later than 30 days after the date
2 on which the Secretary receives such
3 notification, determine whether to re-
4 voke such designation.

5 (3) COVERED FOREIGN SOFTWARE.—The term
6 ''covered foreign software'' means software that is
7 developed by—

8 (A) a person (other than an individual)—
9 (i) who is organized under the laws of
10 a covered country; or
11 (ii) whose principal operations are
12 conducted in a covered country; or
13 (B) a person (other than an individual)
14 that is, directly or indirectly, controlled by a
15 person described in subparagraph (A).

16 (4) MOBILE APPLICATION.—The term ''mobile
17 application'' means a software program that runs on
18 the operating system of a smartphone, tablet com-
19 puter, or similar mobile electronic device.

20 (5) SOFTWARE.—The term ''software'' means
21 any computer software program, including a mobile
22 application.

23 (6) SOFTWARE MARKETPLACE OPERATOR.—
24 The term ''software marketplace operator'' means a
25 person who, for a commercial purpose, operates an

1   online store or marketplace through which software

2   is made available for download by consumers.

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