

AMENDMENT TO H.R. 8038
OFFERED BY MR. SCHWEIKERT OF ARIZONA

At the appropriate place, add the following:

1 **SEC. ____ . PROHIBITION ON REQUIREMENT TO ACCEPT**
2 **COOKIES.**

3 (a) IN GENERAL.—

4 (1) TRACKING AND USER PROPERTY RIGHTS.—

5 It shall be unlawful for the operator of a digital plat-
6 form or any third-party platform to do any of the
7 following:

8 (A) Without the consent of the user—

9 (i) use cookies for the digital plat-
10 form;

11 (ii) collect and store any information
12 about the user, including any habit or pref-
13 erence of the user; and

14 (iii) deliver content to the user that
15 corresponds with any of the personal infor-
16 mation of the user.

17 (B) Restrict a user from using a digital
18 platform if the user declines to consent to any
19 of the activities described in subparagraph (A).

20 (C) Use tracking pixels.

1 (D) Share information about a user with
2 other digital platforms or online businesses.

3 (2) PROPERTY RIGHTS FOR USER INFORMA-
4 TION.—The operator of a digital platform shall do
5 the following:

6 (A) If a user consents to the digital plat-
7 form collecting, storing, or using the informa-
8 tion about the user, provide a disclosure state-
9 ment—

10 (i) that includes a description of the
11 information that the digital platform in-
12 tends to collect, store, or use, what the in-
13 formation will be used for, and what the
14 digital platform determines the economic
15 value of the information to be;

16 (ii) that is consistent across all digital
17 platforms; and

18 (iii) the form of which shall be deter-
19 mined by the Commission.

20 (B) Make the disclosure statement acces-
21 sible to the individual on the platform.

22 (C) Treat any information collected,
23 stored, or used by the digital platform or infor-
24 mation that a user generates on the digital

1 platform as an exclusive property right owned
2 by that user.

3 (D) Determine the economic value of the
4 information described under subparagraph (A)
5 as a property right.

6 (E) Provide an update to users if there is
7 any change in the collection, storage, or use of
8 the information described under subparagraph
9 (A) or the economic value determined under
10 subparagraph (D).

11 (b) ENFORCEMENT.—

12 (1) ENFORCEMENT BY THE FEDERAL TRADE
13 COMMISSION.—

14 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-
15 TICES.—A violation of subsection (a) shall be
16 treated as a violation of a regulation under sec-
17 tion 18(a)(1)(B) of the Federal Trade Commis-
18 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding
19 unfair or deceptive acts or practices.

20 (B) POWERS OF COMMISSION.—The Com-
21 mission shall enforce subsection (a) in the same
22 manner, by the same means, and with the same
23 jurisdiction, powers, and duties as though all
24 applicable terms and provisions of the Federal
25 Trade Commission Act (15 U.S.C. 41 et seq.)

1 were incorporated into and made a part of this
2 Act. Any person who violates such subsection
3 shall be subject to the penalties and entitled to
4 the privileges and immunities provided in the
5 Federal Trade Commission Act.

6 (2) EFFECT ON OTHER LAWS.—Nothing in this
7 section shall be construed in any way to limit the
8 authority of the Commission under any other provi-
9 sion of law or to limit the application of any Federal
10 or State law.

11 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
12 ERAL.—

13 (A) IN GENERAL.—If the chief law en-
14 forcement officer of a State, or an official or
15 agency designated by a State, has reason to be-
16 lieve that any person has violated or is violating
17 subsection (a), the attorney general, official, or
18 agency of the State, in addition to any author-
19 ity it may have to bring an action in State
20 court under its consumer protection law, may
21 bring a civil action in any appropriate United
22 States district court or in any other court of
23 competent jurisdiction, including a State court,
24 to—

1 (i) enjoin further such violation by
2 such person;

3 (ii) enforce compliance with such sub-
4 section;

5 (iii) obtain civil penalties; and

6 (iv) obtain damages, restitution, or
7 other compensation on behalf of residents
8 of the State.

9 (B) NOTICE AND INTERVENTION BY THE
10 FEDERAL TRADE COMMISSION.—The attorney
11 general of a State shall provide prior written
12 notice of any action under subparagraph (A) to
13 the Commission and provide the Commission
14 with a copy of the complaint in the action, ex-
15 cept in any case in which such prior notice is
16 not feasible, in which case the attorney general
17 shall serve such notice immediately upon insti-
18 tuting such action. The Commission shall have
19 the right—

20 (i) to intervene in the action;

21 (ii) upon so intervening, to be heard
22 on all matters arising therein; and

23 (iii) to file petitions for appeal.

24 (C) LIMITATION ON STATE ACTION WHILE
25 FEDERAL ACTION IS PENDING.—If the Commis-

1 sion has instituted a civil action for violation of
2 this section, no State attorney general, or offi-
3 cial or agency of a State, may bring an action
4 under this paragraph during the pendency of
5 that action against any defendant named in the
6 complaint of the Commission for any violation
7 of this section alleged in the complaint.

8 (c) PRIVATE CAUSE OF ACTION.—

9 (1) ACTION.—A user who suffers harm as a re-
10 sult of a violation of subsection (a) may bring an ac-
11 tion against the operator of a digital platform in the
12 appropriate district court of the United States to en-
13 join such violation and for damages.

14 (2) DAMAGES.—A user who suffers harm as a
15 result of a violation of subsection (a) shall not re-
16 ceive less than 90 percent of total damages.

17 (3) ATTORNEY'S FEES.—The amount of an
18 award of attorney's fees under this subsection may
19 not exceed an amount equal to 33 percent of the
20 damages awarded to the user.

21 (d) FEDERAL PREEMPTION.—This Act preempts any
22 State law relating to the requirements described under
23 this Act.

24 (e) DEFINITIONS.—In this section:

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

3 (2) COOKIES.—The term “cookies” means in-
4 formation saved by a web browser that allows the
5 browser to recognize a device and track a user over
6 time.

7 (3) DIGITAL PLATFORM.—The term “digital
8 platform” means any technology-enabled content
9 producer and includes a website, an online business,
10 and an application for a device.

11 (4) THIRD-PARTY PLATFORM.—The term
12 “third-party platform” means an entity that con-
13 tracts with a digital platform to use their website,
14 online business, or application for a device for adver-
15 tising or other purposes.

16 (5) TRACKING PIXEL.—The term “tracking
17 pixel” means a tiny pixel-sized image, hidden or em-
18 bedded in an online page and used for collecting
19 data about a user.

