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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R.

To affirm user ownership of their data, prohibit entities from requiring the transfer or monetization of private data in exchange for services, prohibit the collection of third-party contact information without written consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CLOUD introduced the following bill; which was referred to the Committee on _____

A BILL

To affirm user ownership of their data, prohibit entities from requiring the transfer or monetization of private data in exchange for services, prohibit the collection of third-party contact information without written consent, 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 “You Own the Data
5 Act” or “YODA”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Governments exist to protect individual
4 rights to life, liberty, and property.

5 (2) The protection of civil liberties, including
6 the rights to private property and privacy from un-
7 warranted searches and seizures, is one of the hall-
8 marks of a free society.

9 (3) It is appropriate for Congress to enact laws
10 to protect individuals from data collection by third
11 parties.

12 (4) Data is the property of the user, as the user
13 creates the data.

14 (5) A user maintains ownership of the data of
15 such user, even when such data is sold or leased
16 with the consent of such user.

17 (6) Technology should empower the individual
18 and the productivity of the individual.

19 (7) Individuals should have reasonable access to
20 and use of popularly available consumer technologies
21 without abdicating the rights of such individuals to
22 privacy and anonymity.

1 **SEC. 3. PROHIBITION ON SHARING USER CONTACTS WITH-**
2 **OUT WRITTEN CONSENT AND CLARIFYING**
3 **USER ACCESS TO DATA.**

4 (a) PROHIBITION ON ACCESS TO USER CONTACTS.—

5 It shall be unlawful for a covered entity to ask a user to
6 share the contacts or information about the contacts of
7 the user unless the user and the contacts of the user con-
8 sent to such use in writing.

9 (b) ACCESS TO, AND CORRECTION, DELETION, AND
10 PORTABILITY OF, COVERED DATA.—

11 (1) IN GENERAL.—Subject to paragraphs (2)
12 and (3), a covered entity shall provide a user, imme-
13 diately or as quickly as possible and in no case later
14 than 90 days after receiving a verified request from
15 the user, with the ability to reasonably—

16 (A) access—

17 (i) if applicable, a list of each third
18 party and service provider to whom the
19 covered entity has transferred or shared
20 the covered data of the user;

21 (ii) the covered data of the user, or an
22 accurate representation of the covered data
23 of the user, including data aggregation
24 that is a readable summary, that is held or
25 has been processed by the covered entity or

1 any service provider of the covered entity;

2 and

3 (iii) if a covered entity transfers cov-
4 ered data, a description of the covered data
5 that was transferred and the purpose for
6 which the third party requested the data;

7 (B) request that the covered entity—

8 (i) correct material inaccuracies or
9 materially incomplete information with re-
10 spect to the covered data of the user that
11 is maintained by the covered entity;

12 (ii) delete or de-identify covered data
13 of the user that is or has been maintained
14 by the covered entity;

15 (iii) notify any service provider or
16 third party to which the covered entity
17 transferred such covered data of the cor-
18 rected information; and

19 (iv) provide contact information to the
20 user of any service provider or third party
21 that the covered data of the user was
22 transferred to so that the user may make
23 requests described in this subparagraph;

24 and

1 (C) to the extent that is technically fea-
2 sible, provide covered data of the user that is or
3 has been generated and submitted to the cov-
4 ered entity by the user and maintained by the
5 covered entity in a portable, structured, and
6 machine-readable format that is not subject to
7 licensing restrictions.

8 (2) FREQUENCY AND COST OF ACCESS.—A cov-
9 ered entity shall—

10 (A) provide a user with the opportunity to
11 exercise the rights described in paragraph (1)
12 not less than twice in any 12-month period; and

13 (B) fulfill the responsibilities described in
14 paragraph (1) free of charge.

15 (3) PROHIBITION ON RETALIATION.—A covered
16 entity shall provide the same quality of goods or
17 services, at the same price or rate, regardless of
18 whether a user took an action described under para-
19 graph (1).

20 (4) RETENTION OF DATA.—A covered entity
21 that collects data on a user's browsing history or bi-
22 ometric data and information shall delete the data
23 within 60 days after the date on which the data was
24 collected.

25 (c) DATA MINIMIZATION AND CONTEXTUALITY.—

1 (1) COLLECTION AND USE OF INFORMATION.—

2 A commercial data operator shall limit the collection
3 and sharing of information by the operator with
4 third parties to what is reasonably necessary to pro-
5 vide a service or conduct an activity that a consumer
6 has requested or is reasonably necessary for fraud
7 prevention.

8 (2) RETENTION OF INFORMATION.—A commer-

9 cial data operator that collects the personal informa-
10 tion of a consumer shall limit the use and retention
11 of that information to what is reasonably necessary
12 to provide a service or conduct an activity that a
13 consumer has requested or a related operational pur-
14 pose. Any data collected or retained by a commercial
15 data operator solely for security or fraud prevention
16 may not be used for operational purposes.

17 (3) MONETIZATION.—Monetization of personal

18 information shall not be considered reasonably nec-
19 essary to provide a service or conduct an activity
20 that a consumer has requested or reasonably nec-
21 essary for security or fraud prevention.

22 (d) CONSUMER CHOICE AND CONTROL.—

23 (1) COMMERCIAL DATA OPERATOR.—A com-

24 mercial data operator shall provide a prominently
25 and conspicuously displayed icon a user may click to

1 opt out of data collection on every unique website,
2 mobile application, or computer application.

3 (2) COVERED ENTITIES.—Within 2 years after
4 the date of the enactment of this Act, a covered enti-
5 ty shall take reasonable steps, taking account of
6 available technology, to provide users the ability to
7 directly delete the covered data collected by the cov-
8 ered entity.

9 (e) DEFAULT SETTINGS.—A covered entity may re-
10 quire, through terms of service or otherwise, that a user
11 must consent to the transfer of covered data in order to
12 use the service of the covered entity.

13 (f) POLICIES REGARDING DATA FROM MINORS.—A
14 covered entity may not collect, retain, or transfer the cov-
15 ered data of a user to a third party without affirmative
16 consent from the parent or guardian of the user if the
17 user is below the age of 18 years old, where technically
18 feasible.

19 (g) PROHIBITION ON TRACKING COOKIES WITHOUT
20 USER CONSENT.—A commercial data operator—

21 (1) unless authorized by the user, may not
22 track cookies, including on mobile applications; and

23 (2) shall provide the same services to users who
24 do not authorize tracking cookies.

25 (h) TRANSPARENCY.—

1 (1) PRIVACY NOTICE.—A covered entity shall
2 provide users with a clear, comprehensible, accurate,
3 and continuously available privacy notice that—

4 (A) describes in detail the information col-
5 lected by the operator, how that information
6 would be used, and whether the information
7 would be sold or shared with any third party;
8 and

9 (B) is 1,000 words or less.

10 (2) REPORT ON USE OF INFORMATION RE-
11 QUIRED.—If a user allows a commercial data oper-
12 ator to sell the covered data of the user, the com-
13 mercial data operator shall provide the user with an
14 annual report regarding the types of third parties
15 with whom data has been shared. The report shall
16 include a description of what information has been
17 shared, for what purpose information is shared, and
18 a list of each third party that receives data.

19 (i) DATA SECURITY AND BREACH NOTIFICATION.—
20 A covered entity shall notify each user in a timely manner
21 of any data breach with respect to the information of the
22 user and provide any remedy to compensate the user for
23 the breach of their information, including a credit protec-
24 tion service, fraud alert, and credit monitoring through
25 credit reporting agencies.

1 (j) ENFORCEMENT.—

2 (1) ENFORCEMENT BY THE FEDERAL TRADE
3 COMMISSION.—

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

10 (B) POWERS OF COMMISSION.—The Com-
11 mission shall enforce this section in the same
12 manner, by the same means, and with the same
13 jurisdiction, powers, and duties as though all
14 applicable terms and provisions of the Federal
15 Trade Commission Act (15 U.S.C. 41 et seq.)
16 were incorporated into and made a part of this
17 Act. Any person who violates this section shall
18 be subject to the penalties and entitled to the
19 privileges and immunities provided in the Fed-
20 eral Trade Commission Act.

21 (2) EFFECT ON OTHER LAWS.—Nothing in this
22 section shall be construed in any way to limit the
23 authority of the Commission under any other provi-
24 sion of law or to limit the application of any Federal
25 or State law.

1 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
2 ERAL.—

3 (A) IN GENERAL.—If the chief law en-
4 forcement officer of a State, or an official or
5 agency designated by a State, has reason to be-
6 lieve that any person has violated or is violating
7 this section, the attorney general, official, or
8 agency of the State, in addition to any author-
9 ity it may have to bring an action in State
10 court under its consumer protection law, may
11 bring a civil action in any appropriate United
12 States district court or in any other court of
13 competent jurisdiction, including a State court,
14 to—

15 (i) enjoin further such violation by
16 such person;

17 (ii) enforce compliance with this sec-
18 tion;

19 (iii) obtain civil penalties; and

20 (iv) obtain damages, restitution, or
21 other compensation on behalf of residents
22 of the State.

23 (B) NOTICE AND INTERVENTION BY THE
24 FEDERAL TRADE COMMISSION.—The attorney
25 general of a State shall provide prior written

1 notice of any action under subparagraph (A) to
2 the Commission and provide the Commission
3 with a copy of the complaint in the action, ex-
4 cept in any case in which such prior notice is
5 not feasible, in which case the attorney general
6 shall serve such notice immediately upon insti-
7 tuting such action. The Commission shall have
8 the right—

- 9 (i) to intervene in the action;
10 (ii) upon so intervening, to be heard
11 on all matters arising therein; and
12 (iii) to file petitions for appeal.

13 (C) LIMITATION ON STATE ACTION WHILE
14 FEDERAL ACTION IS PENDING.—If the Commis-
15 sion has instituted a civil action for violation of
16 this section, no State attorney general, or offi-
17 cial or agency of a State, may bring an action
18 under this paragraph during the pendency of
19 that action against any defendant named in the
20 complaint of the Commission for any violation
21 of this section alleged in the complaint.

22 (4) PRIVATE RIGHT OF ACTION.—

23 (A) IN GENERAL.—Any individual alleging
24 a violation of this section or a regulation pro-
25 mulgated under this section may bring a civil

1 action in any Federal or State court of com-
2 petent jurisdiction against a covered entity that
3 has global annual gross revenues of at least
4 \$50,000,000.

5 (B) RELIEF.—In a civil action brought
6 under subparagraph (A) in which the plaintiff
7 prevails, the court may award—

8 (i) \$100 to \$750 per violation;

9 (ii) reasonable attorney’s fees and liti-
10 gation costs; and

11 (iii) any other relief, including equi-
12 table or declaratory relief, that the court
13 determines appropriate.

14 (k) DEFINITIONS.—In this section:

15 (1) COMMERCIAL DATA OPERATOR.—The term
16 “commercial data operator” means an entity acting
17 in its capacity as a consumer online services provider
18 or data broker that—

19 (A) generates a material amount of rev-
20 enue from the use, collection, processing, sale,
21 or sharing of data generated by a user; and

22 (B) has more than 100,000,000 unique
23 monthly visitors or users in the United States
24 for a majority of months during the previous 1-
25 year period.

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

3 (3) CONSENT.—The term “consent” means an
4 affirmative act by an individual that clearly commu-
5 nicates the informed authorization of the individual
6 for an act or practice.

7 (4) CORE FUNCTION.—The term “core func-
8 tion” does not mean targeted advertising or mar-
9 keting.

10 (5) COVERED DATA.—The term “covered data”
11 means individually, identifiable information about a
12 user collected online, including any of the following:

13 (A) Location information that would iden-
14 tify the physical address of an individual.

15 (B) Telephone number.

16 (C) Email address.

17 (D) Social security number or other
18 unique, government-issued identifiers.

19 (E) Nonpublic personal information (as de-
20 fined in section 509 of the Gramm-Leach-Bliley
21 Act (15 U.S.C. 6809)).

22 (F) Content of a personal wire communica-
23 tion, oral communication, or electronic commu-
24 nication such as email or direct messaging with

1 respect to any entity that is not the intended
2 recipient of the communication.

3 (G) Call detail records.

4 (H) Web browsing history, application
5 usage history, and the functional equivalent of
6 either that is not aggregated data.

7 (I) Biometric data and information, such
8 as facial and voice recognition data.

9 (6) COVERED ENTITY.—The term “covered en-
10 tity” means a commercial data broker or large on-
11 line operator that collects covered data from a user
12 through an online platform.

13 (7) DATA BROKER.—The term “data broker”
14 means a covered entity whose principal source of
15 revenue is derived from processing or transferring
16 the covered data of individuals with whom the entity
17 does not have a direct relationship on behalf of a
18 third party for use by the third party.

19 (8) DE-IDENTIFY.—The term “de-identify”
20 means to separate information from the user or IP
21 address the information is associated with.

22 (9) DELETE.—The term “delete” means to re-
23 move or destroy information so that the information
24 is not maintained in human or machine-readable

1 form and cannot be retrieved or used in such form
2 in the normal course of business.

3 (10) LARGE ONLINE OPERATOR.—The term
4 “large online operator” means any person that—

5 (A) provides an online service; and

6 (B) has more than 100,000,000 authenti-
7 cated users of an online service in any 30-day
8 period.

9 (11) MONETIZATION.—The term “monetiza-
10 tion” means the process of collecting, using, and
11 storing data solely for economic benefit.

12 (12) USER.—The term “user” means an indi-
13 vidual residing in the United States who uses a
14 website that collects data and information from the
15 user.