AMENDMENT NO._____   Calendar No._____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—116th Cong., 2d Sess.

S. _____

To amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, to amend the Communications Act of 1934 to modify the scope of protection from civil liability for "good Samaritan" blocking and screening of offensive material, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HAWLEY

Viz:

1 Strike section 201 and insert the following:

2 **SEC. 201. PROTECTION FROM CIVIL LIABILITY FOR "GOOD**

3   **SAMARITAN" BLOCKING AND SCREENING OF**

4   **OFFENSIVE MATERIAL.**

5 Section 230 of the Communications Act of 1934 (47

6 U.S.C. 230) is amended—

7   (1) in subsection (c)—

8   (A) in paragraph (1)—

9   (i) by striking "No provider" and in-

10   serting the following:

1   "(A) IN GENERAL.—No provider"; and

2   (ii) by adding at the end the fol-

3   lowing:

4   "(B) APPLICABILITY.—

5   "(i) IN GENERAL.—Subparagraph (A)

6   shall not apply to any decision or agree-

7   ment made or action taken by a provider

8   or user of an interactive computer service

9   to restrict access to or availability of mate-

10   rial provided by another information con-

11   tent provider.

12   "(ii) CIVIL LIABILITY.—Any applica-

13   ble immunity for a decision or agreement

14   made or action taken by a provider or user

15   of an interactive computer service de-

16   scribed in clause (i) shall be provided solely

17   by paragraph (2)."; and

18   (B) in paragraph (2)—

19   (i) by redesignating subparagraphs

20   (A) and (B) as clauses (i) and (ii), respec-

21   tively, and adjusting the margins accord-

22   ingly;

23   (ii) in the matter preceding clause (i),

24   as so redesignated, by striking "No pro-

25   vider" and inserting the following:

1   "(A) IN GENERAL.—Subject to the other

2   provisions of this paragraph, no provider";

3   (iii) in subparagraph (A), as so redes-

4   ignated—

5   (I) in clause (i), as so redesig-

6   nated—

7   (aa) by striking "considers

8   to be" and inserting "has an ob-

9   jectively reasonable belief is";

10   and

11   (bb) by striking "or other-

12   wise objectionable" and inserting

13   "promoting self-harm, promoting

14   terrorism, unlawful, or in viola-

15   tion of the terms of service of the

16   provider described in subpara-

17   graph (B)(i)"; and

18   (II) in clause (ii), as so redesig-

19   nated, by striking "paragraph (1)"

20   and inserting "clause (i)"; and

21   (iv) by adding at the end the fol-

22   lowing:

23   "(B) GOOD FAITH.—For the purposes of

24   subparagraph (A)(i), a provider of an inter-

25   active computer service takes an action volun-

1   tarily in good faith to restrict access to or avail-

2   ability of material described in such subpara-

3   graph (A)(i) only if the provider—

4   "(i) has publicly available terms of

5   service that state plainly and with particu-

6   larity the criteria that the provider uses in

7   carrying out content moderation practices;

8   "(ii) restricts access to or availability

9   of that material consistent with the terms

10   of service described in clause (i) of this

11   subparagraph;

12   "(iii) does not—

13   "(I) restrict access to or avail-

14   ability of that material on deceptive or

15   pretextual grounds; or

16   "(II) apply the terms of service

17   described in clause (i) of this subpara-

18   graph to restrict access to or avail-

19   ability of that material if that mate-

20   rial is similarly situated to material

21   that the provider intentionally declines

22   to restrict; and

23   "(iv) provides the person supplying

24   that material with timely notice describing

25   with particularity the reasonable factual

1   basis for the restriction imposed by the

2   provider and a meaningful opportunity for

3   that person to respond to the notice, un-

4   less—

5   ''(I) a law enforcement agency

6   has requested that the provider not

7   provide that notice; or

8   ''(II) the provider reasonably be-

9   lieves that—

10   ''(aa) the material relates to

11   terrorism or other criminal activ-

12   ity; or

13   ''(bb) providing the notice

14   would risk causing imminent

15   harm to others.

16   ''(C) PRIVATE RIGHT OF ACTION.—A per-

17   son aggrieved by an action taken by an edge

18   provider voluntarily to restrict access to or

19   availability of material that is not taken in good

20   faith, as provided under subparagraph (B), may

21   bring a civil action against the edge provider in

22   any court of competent jurisdiction to obtain—

23   ''(i) the greater of—

24   ''(I) damages of $5,000; or

25   ''(II) actual damages;

6

1   "(ii) a reasonable attorney's fee; and

2   "(iii) costs and other expenses de-

3   scribed in sections 1821 and 1920 of title

4   28, United States Code (or, in the case of

5   an action brought in State court, any simi-

6   lar costs and other expenses).";

7   (2) in subsection (e), by adding at the end the

8 following:

9   "(6) NO EFFECT ON LEGAL PROMISES.—Noth-

10 ing in this section shall be construed to impair or

11 limit any claim for breach of contract, promissory

12 estoppel, or breach of a duty of good faith."; and

13   (3) in subsection (f)—

14   (A) in paragraph (3)—

15   (i) by striking "The term" and insert-

16   ing the following:

17   "(A) IN GENERAL.—The term"; and

18   (ii) by adding at the end the fol-

19   lowing:

20   "(B) RESPONSIBILITY.—For purposes of

21   subparagraph (A), being responsible in whole or

22   in part for the creation or development of infor-

23   mation—

24   "(i) includes any instance in which a

25   person or entity editorializes or affirma-

1   tively and substantively modifies the con-

2   tent of another person or entity; and

3   "(ii) does not include a change to the

4   format, layout, or basic appearance of the

5   content of another person or entity."; and

6   (B) by adding at the end the following:

7   "(5) EDGE PROVIDER.—The term 'edge pro-

8   vider'—

9   "(A) means an entity that—

10   "(i) provides an interactive computer

11   service—

12   "(I) through a website, online ap-

13   plication, or mobile application (in-

14   cluding a single interactive computer

15   service that is provided through more

16   than 1 such website or application);

17   "(II) through which information

18   provided by another information con-

19   tent provider is distributed; and

20   "(III) that, in any month during

21   the most recently completed 12-month

22   period—

23   "(aa) more than 30,000,000

24   users in the United States

25   accessed, without regard to the

1   means by which the users

2   accessed the service; or

3   ''(bb) more than

4   300,000,000 users worldwide

5   accessed, without regard to the

6   means by which the users

7   accessed the service; and

8   ''(ii) during the most recently com-

9   pleted taxable year, had more than

10         $1,500,000,000 in global revenue; and

11   ''(B) does not include an organization de-

12   scribed in section 501(c) of the Internal Rev-

13   enue Code of 1986 that is exempt from taxation

14   under section 501(a) of such Code.''.