AMENDMENT NO._____   Calendar No._____

Purpose: To improve the bill.

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

S. 4632

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. GRAHAM

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).";

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:

3

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 or violent extremism, in
15   violation of a duly enacted law of
16   the United States, or in violation
17   of the terms of service of the pro-
18   vider described in subparagraph
19   (B)(i)''; and
20   (II) in clause (ii), as so redesig-
21   nated, by striking "paragraph (1)"
22   and inserting "clause (i)''; and
23   (iv) by adding at the end the fol-
24   lowing:

1 "(B) GOOD FAITH.—For the purposes of
2 subparagraph (A)(i), a provider of an inter-
3 active computer service takes an action volun-
4 tarily in good faith to restrict access to or avail-
5 ability of material described in such subpara-
6 graph (A)(i) only if the provider—

7   "(i) has publicly available terms of
8   service that state plainly and with particu-
9   larity the criteria that the provider uses in
10   carrying out content moderation practices;

11   "(ii) restricts access to or availability
12   of that material consistent with the terms
13   of service described in clause (i) of this
14   subparagraph;

15   "(iii) does not—

16   "(I) restrict access to or avail-
17   ability of that material on deceptive or
18   pretextual grounds; or

19   "(II) apply the terms of service
20   described in clause (i) of this subpara-
21   graph to restrict access to or avail-
22   ability of that material if that mate-
23   rial is similarly situated to material
24   that the provider intentionally declines
25   to restrict; and

1   "(iv) provides the person supplying

2   that material with timely notice describing

3   with particularity the reasonable factual

4   basis for the restriction imposed by the

5   provider and a meaningful opportunity for

6   that person to respond to the notice, un-

7   less—

8   "(I) a law enforcement agency

9   has requested that the provider not

10   provide that notice; or

11   "(II) the provider reasonably be-

12   lieves that—

13   "(aa) the material relates to

14   terrorism or other criminal activ-

15   ity; or

16   "(bb) providing the notice

17   would risk causing imminent

18   harm to others."; and

19   (C) by adding at the end the following:

20   "(3) RULE OF CONSTRUCTION.—For the pur-

21   poses of this subsection, a provider or user of an

22   interactive computer service that takes an action

23   under paragraph (2)(A) with respect to material be-

24   cause the provider or user has an objectively reason-

25   able belief that the material violates the terms of

1   service of the interactive computer service may not

2   be treated as the publisher or speaker of any mate-

3   rial provided by another information content pro-

4   vider with respect to which the provider or user of

5   the interactive computer service does not take that

6   action.'';

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.'';

13   (3) in subsection (f)(3)—

14   (A) by striking ''The term'' and inserting

15   the following:

16   ''(A) IN GENERAL.—The term''; and

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

18   ''(B) RESPONSIBILITY.—For purposes of

19   subparagraph (A), being responsible in whole or

20   in part for the creation or development of infor-

21   mation—

22   ''(i) includes any instance in which a

23   person or entity—

1   ''(I) affirmatively and sub-

2   stantively modifies the content of an-

3   other person or entity; or

4   ''(II) editorializes with respect to

5   the content of another person or enti-

6   ty; and

7   ''(ii) does not include a change to the

8   format, layout, or basic appearance of the

9   content of another person or entity.''; and

10   (4) by adding at the end the following:

11   ''(g) SEVERABILITY.—If any provision of this section

12 or the application of such a provision to any person or

13 circumstance is held to be unconstitutional, the remainder

14 of this section and the application of the provision to any

15 other person or circumstance shall not be affected.''.