



QUICK TAKE: HIGHLIGHTS FROM THE REPORTED DRAFT OF THE EO

What the EO *appears to do*:

1. Requires NTIA to ask FCC to start a regulations process “clarifying:”
 - “(i) the conditions under which an action restricting access to or availability of material is not “taken in good faith” within the meaning of subparagraph (c)(2)(A) of section 230, particularly the conditions under which such actions will be considered to be:
 - (1) Deceptive, pretextual, or inconsistent with a provider’s terms of service; or
 - (2) The result of inadequate notice, the product of unreasoned explanation, or having been undertaken without a meaningful opportunity to be heard; and
 - (ii) Any other proposed regulations that the NTIA concludes may be appropriate to advance the policy described in subsection (a) of this section.”
2. Creates a federal-state working group:

“Sec. 5. State Review of Unfair or Deceptive Practices.

 - (a) The Attorney General shall establish a working group regarding the potential enforcement of State statutes that prohibit online platforms from engaging in unfair and deceptive acts and practices. The working group shall invite State Attorneys General for discussion and consultation, as appropriate and consistent with applicable law; and
 - (b) The White House Office of Digital Strategy shall submit all complaints described in Section 4(b) of this order to the working group, consistent with applicable law. The working group shall also collect publicly available information regarding the following:
 - (i) Monitoring or creating watch-lists of users based on their interactions with content or users (e.g., likes, follows, time spent); and
 - (ii) Monitoring users based on their activity off the platform.”
3. Requires the FTC to write a report:

“(d) For large internet platforms that are vast arenas for public debate, including the social media platform Twitter, the FTC shall also consider whether complaints allege violations of law that implicate the policies set forth in section 4(a) of this order. The FTC shall develop a report describing such complaints and make the report publicly available, consistent with applicable law.”

What the EO *appears to encourage*:

1. Encourages FTC action:

“(c) The FTC shall consider taking action, as appropriate and consistent with applicable law, to prohibit unfair or deceptive acts or practices in or affecting commerce, pursuant to 15 U.S.C. 45. Such unfair or deceptive acts or practice shall include practices by entities regulated by section 230 that restrict speech in ways that do not align with those entities’ public representations about those practices.”

Definition of “platform:”

“For purposes of this order, the term “online platform” means any website or application that allows users to create and share content or engage in social networking, or any general search engine.”