

Title 15 – ELECTED OFFICIALS
Division 60 – Attorney General
Chapter 19 – Social Media

15 CSR 60-19.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo, and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. This rule does not contain an exhaustive list of practices that violate the Act. Instead, this rule identifies certain specific practices that violate section 407.020, RSMo.

(1) **“Social media platform”** means an Internet website, medium or application that is open to the public, allows a user to create an account, and enables users to communicate with other users for the primary purpose of posting or receiving user-generated content, including information, news, comments, videos, or images. The term does not include:

(A) An Internet Service Provider;

(B) Online encyclopedias;

(C) Email;

(D) Electronic dating services;

(E) An online service, application, or website that consists primarily of news, sports, entertainment, or other information or content that is not user generated but is selected by the provider;

(F) A platform that functionally has fewer than 50 million distinct, active users in the United States in a calendar month and fewer than 1 billion distinct, active users worldwide in a calendar month; or

(G) Aspects of websites, mediums, or applications that serve primarily as:

1. Peer-to-peer or chat messaging services, such as text messages or applications providing similar services;

2. Online marketplaces;
3. Payment services;
4. Platforms for reviewing other services; or
5. Ride-sharing services.

If thirty percent or more of Americans regularly obtain news from an Internet website, medium, or application described in this subsection, the website, medium, or application is rebuttably presumed to be a “social media platform” unless excluded by the terms above.

- (2) **“Content moderation”** means filtering, selecting, amplifying, curating, or suppressing content for a user to post or view on a social media platform.
- (3) **“Content moderator”** means a company or person engaged in content moderation.
- (4) **“User”** means a person who posts, uploads, transmits, shares, or otherwise publishes or receives content through a social media platform while located in the State of Missouri. The term includes a person who has a social media platform account that the social media platform has disabled or locked.

AUTHORITY: sections 407.020, RSMo (Supp. 2020), 407.145, RSMo (1993).

PUBLIC COST: This rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500).

PRIVATE COST: This rule will not cost private entities more than five hundred dollars (\$500).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Attorney General’s Office, ATTN: Proposed Rulemaking, Supreme Court Building, 207 W. High Street, PO Box 899, Jefferson City, MO 65102, or by email to regulations@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15 – ELECTED OFFICIALS
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Chapter 19 – Social Media

15 CSR 60-19.020 Prohibition on Restricting Choice of Content Moderator

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo, and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. This rule does not contain an exhaustive list of practices that violate the Act. Instead, this rule identifies certain specific practices that violate section 407.020, RSMo.

To provide notice to the public of the basis for the attorney general's actions, the foundation and rationale set forth in this purpose statement also sets forth more fully the purpose and foundation for 15 CSR 60-19.010 through 15 CSR 60-19.040.

The attorney general has determined that a rulemaking is necessary to carry out the purposes of the MMPA. An enormous proportion of speech currently occurs on social media, increasing every year, and nearly all of that speech is subject to complete control by a small handful of powerful actors. Last year, the Supreme Court made clear that “it is critically important to have a well-functioning sphere of expression, in which citizens have access to information from many sources” because “[t]hat is the whole project of the First Amendment.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 732–33 (2024). It further made clear that local governments can “protect that access” by “enforcing competition laws.” *Id.* Having considered this new legal authority and the available evidence, the attorney general has determined that a rulemaking is necessary to clarify how Missouri’s “competition laws” protect the “project of the First Amendment” in the context of social media. *Id.*

The MMPA prohibits anticompetitive practices, including unlawful consolidation and acts that violate Missouri or federal antitrust laws. “[T]he literal words cover every practice imaginable and every unfairness to whatever degree.” *Ports Petroleum Co. v. Nixon*, 37 S.W.3d 237, 240 (Mo. banc 2001)). In fact, the MMPA can be used to prosecute violations of other statutes, including anti-competition laws. The MMPA prohibits unfair and deceptive practices. Violations of many other laws are necessarily unfair or deceptive practices. Thus, the Missouri Supreme Court has concluded that the MMPA covers any violation of “any public

policy” so long as the violation of that other law “presents a risk” of “substantial injury to consumers.” *Huch v. Charter Commun., Inc.*, 290 S.W.3d 721, 725 (Mo. banc 2009) (quoting 15 CSR 60–8.020(1)). Unlawful consolidation of market power, including anticompetitive acquisition or maintenance of that power, fits well within the meaning of the MMPA.

Unwarranted concentration is problematic in every industry, but it has become particularly pronounced in the context of social media. No longer in their infancy, a handful of large social media companies now hold extraordinary bottlenecking power to control what information millions of Americans see. “Today’s digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors. Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties.” *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1221 (2021). Like email, these enormous networks provide access to the speech of billions of others. But unlike email, content moderation on these networks is centrally controlled. Although a person might be restricted from using a specific email server, no person has power to prevent another from using email altogether. Not so for the largest social media platforms.

These companies possess extraordinary power to control what people see and hear on platforms that are akin to the “modern public square.” *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). No person is immune from this control. Even the President of the United States can unilaterally be censored “at any time for any or no reason.” *Knight First Amend.*, 141 S. Ct. at 1221 (quoting terms of service in a case where a social media company fully censored the sitting President).

This proposed rule thus intends to clarify how Missouri’s competition laws apply to content moderation on large social media platforms. In short, this proposed rule will clarify that dominant social media companies cannot acquire or exercise monopoly control over content moderation on the social media platforms they operate. That “unfair practice,” § 407.020, “presents a risk” of “substantial injury to consumers,” *Huch*, 290 S.W.3d at 725. Those companies may still offer content-moderation services. But to mitigate the harm of market concentration and centralized control, they must permit users equal opportunity to choose among competing content-moderation services.

At the same time, because the harm to consumers comes from concentrated control over large amounts of speech, which exists only among the largest of social media companies, this proposed rule also intends to clarify that smaller and medium-sized platforms do not violate the MMPA simply by not permitting users to choose competitor content moderators.

- (1) It is an unfair, deceptive, fraudulent, or otherwise unlawful practice for any person to operate a social media platform satisfying the numerical threshold in 15 CSR 60-19.010 unless the social media platform permits users the opportunity to select a third-party content moderator of their choice rather than rely on the content moderation provided directly by the social media platform.
- (2) The opportunity to choose is satisfied if:
 - (A) Users are provided with a choice screen upon account activation and at least every 6 months thereafter that gives them the opportunity to choose among competing content moderators, if any competing content moderators have sought access to the platform;
 - (B) No selection is chosen by default;
 - (C) The choice screen does not favor the social media platform's content moderator over those of third parties;
 - (D) When a user chooses a content moderator other than that provided by the social media platform, the social media platform permits that content moderator interoperable access to data on the platform in order to moderate what content is viewed by the user; and
 - (E) Except as expressly authorized below, the social media company does not moderate, censor, or suppress content on the social media platform such that a user is unable to view that content if their chosen content moderator would otherwise permit viewing that content.
- (3) The right of a user to choose an alternate content moderator cannot be waived.
- (4) Nothing shall prohibit a social media platform from, in good faith, imposing security requirements on third parties that seek to access the platform for the purpose of third-party content moderation. Such security requirements shall be no greater than necessary to protect privacy information (such as passwords and logins), keep a social media platform resistant to outside hacking or data attacks, and prohibit data scraping.
- (5) Nothing in this regulation shall be construed to prohibit a social media platform from advertising or otherwise promoting its own content moderation service to users so long as the interface used to choose a content moderator does not favor the social media platform's content moderation choice over others and the social

media platform does not override the content moderation decisions of competing content moderators.

(6) Nothing shall prohibit a social media platform from moderating, restricting, or prohibiting, to the exclusion of other content moderators, content that in the social media company's good-faith judgment:

(A) the social media platform is specifically authorized to restrict or moderate by federal law;

(B) is the subject of a referral or request from an organization with the purpose of preventing the sexual exploitation of children and protecting survivors of sexual abuse from ongoing harassment;

(C) directly incites criminal activity or consists of specific threats of violence targeted against a person or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer or judge;

(D) is sexually explicit; or

(E) is unlawful expression under laws or regulations consistent with the United States Constitution.

AUTHORITY: sections 407.020, RSMo (Supp. 2020), 407.145, RSMo (1993).

PUBLIC COST: This rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500).

PRIVATE COST: This rule will cost private entities up to \$41,960,000 for the first year and \$11,960,000 for subsequent years.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Attorney General's Office, ATTN: Proposed Rulemaking, Supreme Court Building, 207 W. High Street, PO Box 899, Jefferson City, MO 65102, or by email to regulations@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15 – ELECTED OFFICIALS
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15 CSR 60-19.030 Prohibition on Onerous and Unnecessary Access Requirements

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo, and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. This rule does not contain an exhaustive list of practices that violate the Act. Instead, this rule identifies certain specific practices that violate section 407.020, RSMo.

- (1) It is an unfair, deceptive, fraudulent, or otherwise unlawful practice for any person operating a social media platform satisfying the numerical threshold in 15 CSR 60-19.010 to set access requirements for third-party content moderators that exceed the requirements permitted by § 60-19.020(4), except that such social media platform may reasonably protect trade secrets and proprietary processes from third party content moderators insofar as such restrictions do not prevent or inhibit the user choice set forth in 15 CSR 60-19.020.

AUTHORITY: sections 407.020, RSMo (Supp. 2020), 407.145, RSMo (1993).

PUBLIC COST: This rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500).

PRIVATE COST: This rule will not cost private entities more than five hundred dollars (\$500).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Attorney General's Office, ATTN: Proposed Rulemaking, Supreme Court Building, 207 W. High Street, PO Box 899, Jefferson City, MO 65102, or by email to regulations@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 15 – ELECTED OFFICIALS
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15 CSR 60-19.040 Severability, Construction, and Effective Date

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo, and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application, including the severability of provisions contained in this chapter.

- (1) This chapter applies to the maximum extent permitted by the United States Constitution, the laws of the United States, the Constitution of Missouri, and the laws of Missouri, but no further.
- (2) This chapter does not subject a social media platform to damages or other legal remedies to the extent the social media platform is protected from those remedies under federal law.
- (3) If any application of any provision, word, or clause in this chapter to any person or circumstance is found by a court to be invalid, that application alone shall be severed and the remaining possible applications of every provision, word, and clause to all other persons and circumstances shall remain in force.
- (4) If any court issues an order declaring that any exception created in § 60-19.020 would make any provision of this chapter a content-based regulation subjecting such regulation to heightened scrutiny and declaring that the regulation fails heightened scrutiny, then such exception shall automatically be severed and abolished.

AUTHORITY: sections 407.020, RSMo (Supp. 2020), 407.145, RSMo (1993).

PUBLIC COST: This rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500).

PRIVATE COST: This rule will not cost private entities more than five hundred dollars (\$500).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Attorney General's Office, ATTN: Proposed

Rulemaking, Supreme Court Building, 207 W. High Street, PO Box 899, Jefferson City, MO 65102, or by email to regulations@ago.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.