



March 31, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Garland,

We share your commitment to promoting healthy competition online in order to benefit consumers. Unfortunately, two pending bills in Congress that the Department recently addressed¹ – the American Innovation and Choice Online Act (S. 2992) and the American Choice and Innovation Online Act (H.R. 3816) – **take an overly broad approach that threatens consumers, privacy, and online content moderation.**

It is for that reason that these bills faced vocal bipartisan opposition in their respective House and Senate markups.² More importantly, prominent Democratic leaders in both chambers raised substantial concerns about the bills in their current form.³ Though the bills' authors have promised to work with members to address their concerns, no updated draft has been circulated for public consumption, besides Manager's amendments passed at each bill's respective markup that still leave many concerns unaddressed.⁴

And while consumers have voiced support for more regulation of the technology sector, the more that consumers learn about the likely impacts of these particular bills – including banning or degrading Amazon Prime and Amazon Basics, Google Maps in search results,

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https://www.wsj.com/articles/doj-backs-antitrust-bill-targeting-amazon-google-apple-11648519385?reflink=share_mobilewebshare

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<https://thehill.com/policy/technology/590659-senate-panel-advances-bill-blocking-tech-giants-fr-om-favoring-own-products>

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<https://www.washingtonpost.com/politics/2022/01/21/senates-tech-antitrust-push-notches-win-major-hurdles-loom/>

<https://www.washingtonpost.com/politics/2021/12/03/push-crack-down-tech-giants-faces-toug-h-voting-math-congress/>

⁴ <https://www.latimes.com/politics/story/2022-02-01/antitrust-effort-against-big-tech>

and Apple apps on iPhones – the more they oppose these bills.⁵ Simply put, consumers are not clamoring for Congress to break services on which they depend.

While it is well within your Department's purview to signal support for proposed legislation, **doing so at this time may be premature given the half-finished nature of these measures and lingering questions about their negative consequences.** As the debate over these measures continues, we hope that the Department will consider the bills' unintended impacts, including their erosion of online content moderation; their negative impact on privacy and security; and their failure to acknowledge the realities of our digital economy.

Erosion of Online Content Moderation

By forcing platforms to treat “similarly situated business users” alike, the bills would prohibit platforms from moderating their sites to ensure healthy and safe discourse – making it impossible to act against hateful, racist, violent or otherwise harmful content.

This concern has also been raised by leading progressive digital rights groups including Free Press and the Center for Democracy & Technology (CDT).⁶ Specifically, in a letter to the bill's authors, CDT warned that “the bill risks chilling important moderation decisions that responsibly address abuse and that support the participation of a diverse array of Americans in online life.”⁷

Our organization supports online platforms' ability to remove or deplatform nefarious actors seeking to undermine our democracy and truthful discourse. However, this provision of the bill would have prevented Apple, Google, and Amazon from taking action to deplatform Parler from their services after the January 6th insurrection.⁸

Senator Alex Padilla (D-CA) also raised this concern during the Senate bill's markup when he stated:

“This bill may hamper the efforts of platforms to address the spread of hate speech and misinformation and disinformation efforts online that have caused so many recent problems for our democracy [...] this provision can be a gift to bad actors seeking to prevent platforms from blocking business users that peddle hate speech or imagined election disinformation.”⁹

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<https://progresschamber.org/wp-content/uploads/2022/01/Normington-Petts-Polling-Memo.pdf>

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<https://www.freepress.net/news/press-releases/provision-senate-antitrust-bill-would-undermine-fight-against-online-hate-and-disinformation>

⁷ <https://cdt.org/wp-content/uploads/2022/03/S2292-CDT-letter-3-9-22-FINAL.pdf>

⁸ <https://www.nytimes.com/2021/01/09/technology/apple-google-parler.html>

⁹ <https://www.youtube.com/watch?v=Isos0SWuuM&t=25s>

The nightmare scenario, under the bills' current frameworks, would allow a future or current partisan federal or state attorney general to bring suit against a platform for taking such action, even if the offending app violates a platform's terms of service.

As Free Press rightly points out: "...this bill opens the door to suits by federal and state officials arguing that those terms of service themselves discriminate against certain viewpoints, claiming that what tech companies rightly define as hate speech, incitements to violence, or vaccine disinformation is really just competing political or health information that must stay up."¹⁰

Negative Impact on Privacy and Security Measures

The bills force platforms to move away from a "privacy first" mindset in favor of "access for all" practices. Our organization supports the principle of interoperability; however, the concept of interoperability without privacy protections is inviting harm to consumers and abuse with their data.

Senators Patrick Leahy (D-VT), Dianne Feinstein (D-CA), and Chris Coons (D-CT) all raised this exact concern during the markup of the Senate version of the bill.¹¹ Specifically, during the markup, Senator Leahy stated:

"The bill creates a bar that is far too high for platforms to protect privacy without being penalized, which I worry could lead to a race to the bottom on Americans' privacy."¹²

Moreover, the bills ignore all the active privacy protections and policies in place by the companies whose practices they seek to regulate. As a consequence, restricting self-preferencing by specific platforms means that built-in encryption services are degraded. In fact, requiring platforms to share all data generated on the platform, as the bills do, would eliminate data minimization policies. And mandating data portability without clear data use regulations in the legislation diminishes data use protections currently in place.

For example, Google automatically includes an encryption service in many of its products, including Gmail and Google Drive, making the default experience safer for all users. Because Google owns the encryption service, including it in any of Google's other products could be seen as unlawfully preferencing its own products over competitors' under the

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<https://www.freepress.net/news/press-releases/provision-senate-antitrust-bill-would-undermine-fight-against-online-hate-and-disinformation>

¹¹ <https://progresschamber.org/round-up-senate-democrats-raise-concerns-at-tech-bill-markup/>

¹² <https://www.youtube.com/watch?v=aK5iD4-cwT4>

bill's rules. But eliminating these built-in services would make products like Gmail and Google Drive less safe for the average user.

Many of these negative impacts of the bills are similar to likely negative impacts of Europe's Digital Markets Act, particularly cybersecurity concerns. We appreciate the Biden Administration's identification of those concerns¹³ and believe these bills pose similar risks.

Ignores the Reality of our Digital Economy

While all of us are concerned about ensuring vibrant and competitive high-tech markets, positive signs of competition are everywhere. Deal flow and valuations are reaching new heights in technology startups,¹⁴ we see more unicorn companies than ever before,¹⁵ and last year saw record investment in the crypto/web3 sector,¹⁶ which is providing a competitive threat to "web2" incumbent companies.

Finally, the Department argues that large technology companies present a threat to our democracy, but recent actions by these companies in response to Russia's invasion of Ukraine and assault on Ukraine's democracy has proven the opposite.

Both Google¹⁷ and Apple¹⁸ disabled traffic and live incidents to their map services to protect users' safety, while Meta gave Facebook users in Ukraine special tools to lock their profiles and make their friends' lists unsearchable.¹⁹ Furthermore, Facebook removed disinformation accounts targeting Ukrainians.²⁰ In fact, major tech companies took down

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<https://mlexmarketinsight.com/news/insight/us-engaged-with-eu-to-address-digital-legislation-s-impact-on-american-firms-white-house-s-harrell-says>

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https://www.wsj.com/articles/startups-crack-records-as-more-money-flows-to-silicon-valley-11619004801?mod=hp_lista_pos2

15 <https://minutes.co/10-reasons-we-are-seeing-more-unicorn-companies-than-ever-before/>

16 <https://fortune.com/2021/12/20/invstors-pour-record-money-cryptocurrency/>

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<https://www.theverge.com/2022/2/28/22954426/google-disables-maps-traffic-data-in-ukraine-to-protect-citizens>

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<https://news.sky.com/story/how-are-the-big-tech-companies-responding-to-the-invasion-of-ukraine-12555497>

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<https://www.fastcompany.com/90725896/meta-will-expand-lock-your-profile-protections-to-russian-facebook-users>

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<https://www.nbcnews.com/tech/internet/facebook-twitter-remove-disinformation-accounts-targeting-ukrainians-rcna17880>

apps and services focused on spreading propaganda in support of the Russian invasion.²¹ Facebook posed such a threat to Russia's propaganda efforts by fact-checking and labeling posts from state sources that it was blocked entirely within Russia.²²

Addressing the technology sector by enacting this legislation is like setting one's house on fire to take care of a termite problem. It solves the supposed problem, but with great collateral damage.

As Congress continues debate on these measures, we urge you to consider their negative impact on content moderation, privacy, national security, and consumers.

Sincerely,



Adam Kovacevich
CEO and Founder
Chamber of Progress

²¹

https://www.business-standard.com/article/international/the-power-of-tech-giants-how-they-are-sanctioning-russia-over-ukraine-war-122030700258_1.html

²² <https://www.npr.org/2022/03/07/1085025672/russia-social-media-ban>