

EXPERTS SAY:

SENATOR KLOBUCHAR'S ANTI-TECH BILL WILL BREAK AMAZON PRIME

(S. 2992 AND H.R. 3816)



Senators Klobuchar, Grassley, and other cosponsors introduced S. 2992, the "American Innovation and Choice Online Act." They have claimed that "this bill does not outlaw Amazon Prime. Let's go for the lie, it does not do that."

However, experts who have analyzed the detail of the bill and how it works have come to a clear conclusion: the bill will break Amazon Prime. It's a combination of vague prohibitions in the bill combined with crippling penalties.

Adam Kovacevich
Chamber Of Progress

"Does Senator Klobuchar's bill say the words 'Amazon Prime is banned'? Of course not. But the provisions above directly undercut important components of how Prime and Fulfillment By Amazon combine to give consumers free two-day shipping."

"Technically Amazon could 'offer' Prime free two-day shipping, but this section [2(b)(2)] of the bill would A) prevent Amazon from funding those shipping costs through merchant fees, and B) make it difficult to deliver the product within two days by dropping the requirement for in-house fulfillment. So in reality, the bill would eliminate both the funding model and logistics model that make Prime possible."

Matt Schruers
Computer And Communications Industry Association

The bill "would target three key activities that enable Amazon Prime to be such an attractive and useful service for consumers: (1) self preferencing; (2) conditioning preferential status on the purchase of another service; and (3) curating recommendations for Amazon customers."

"Because Amazon Prime is Amazon's 'own service,' the bill [Section 2(a)1] would prevent Amazon from continuing to display the Prime badge on certain products, because doing so "unfairly preferences" Prime products over non-Prime products. A merchant who chooses not to participate in FBA could argue, if this bill were law, that the Prime label for competing goods 'materially harmed' its ability to compete. And that could negate the entire value of the Prime program for consumers: being able to choose products that will arrive within two days."

"Section 2(b)(6) would prohibit using ranking to favor one business user over another. If multiple sellers offer the same product, one of the criteria Amazon considers when making a recommendation is Prime eligibility, so Prime subscribers know where they can take advantage of the service. Section 2(b)(6) would prevent Amazon from highlighting a Prime offer over a non-Prime offer or even considering it as a relevant criteria, thereby preventing Prime subscribers from making the most informed choices."

Michael Mandel
Progressive Policy Institute

"The bill's combination of broad language, very high fines, and no safe harbor means that even good faith efforts to adhere to the bill's intentions could result in a huge financial hit to major American firms such as Apple, Alphabet, and Amazon. That threat, in turn, will lead these companies to substantially reduce or alter the services they offer to minimize opportunities to be fined."

"Facing this threat, Amazon can choose to keep Prime in place, and run the risk of huge, business-killing fines. More likely, it could reduce the quality of its delivery promise, and offer the same lower-quality logistic service to everyone, including Prime customers. Or it could close down its third-party selling market, so it's not exposed to fines."