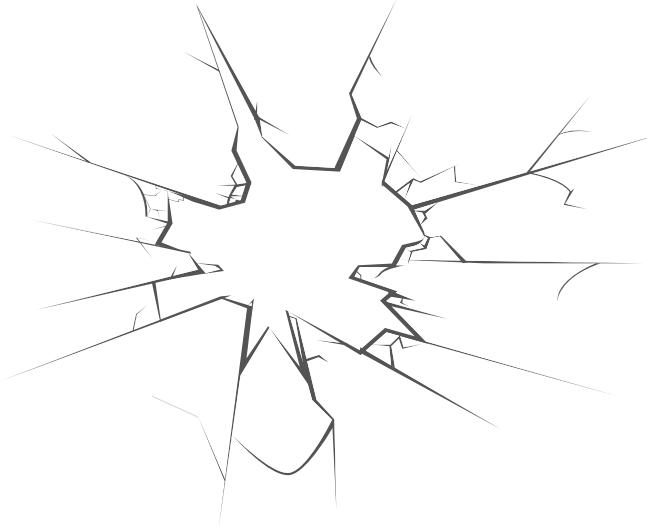


Senator Leahy, Experts:

AICOA RAISES SERIOUS CONCERN FOR PRIVACY & SMALL BUSINESSES

(S. 2992 AND H.R. 3816)



Senators Klobuchar, Grassley, and other cosponsors recently introduced S. 2992, "The American Innovation and Choice Online Act" (AICOA) to the Senate Judiciary Committee for markup.

Senator Leahy expressed strong concerns:

"The bill makes it too difficult for online platforms to adequately protect consumers' privacy. The bill creates a bar far too high for platforms to protect privacy without worrying about being penalized."

"I have other issues I would like to work on with cosponsors of the bill, such as unintended economic consequences for small businesses who rely greatly on online platforms — there are many small businesses in Vermont. I also want to make sure that we are not inadvertently harming our national security."

Experts agree:

Graham DuFault
The App Association

"Limiting the universe of bad actors subject to removal to those that appear on lists 'maintained by the Federal Government' is laughably inadequate and irresponsible cybersecurity policy. The new language only protects token cybersecurity activity, shielding platforms if they rely on the lists of prohibited persons and businesses from the federal government. Cybercriminals adapt quickly and take a variety of measures to prevent detection. Requiring platforms to wait for threat identification and addition to a federal government list gives criminals an enviable new advantage and would expose consumers to a fresh wave of new threats that mobile devices can easily avoid at present."

Tatyana Bolton and Brandon Pugh
R Street Institute

"On the whole, it is difficult for security experts to encourage resilience and diligence for platforms and networks along with the uptake of strong cybersecurity practices. It is even harder to convince businesses that cyber risk is a business risk, or encourage them to develop products with security in mind. While this is not a strict cybersecurity bill, it adds obstacles and restrains the application of security safeguards by platforms, which creates adverse incentives."

"This bill would punish companies with a business model that focuses on security. From a policy perspective, we should encourage—not discourage—more companies to include more stringent security for all products, especially software that is sold at scale to millions of users. Forced interoperability, narrow requirements and obstacles for security updates through requirements for affirmative defense, as well as patchy security exclusions, create a recipe for weaker cybersecurity and should be reconsidered, amended or removed before any further movement on this legislation."

Karen Kerrigan
Small Business & Entrepreneurship Council

"The visible rush to move S.2992 out of committee despite numerous serious concerns expressed by Senators is a disturbing development. As noted by both Democrats and Republicans on the committee, the legislation did not receive a full hearing, which brought up various significant issues. These concerns include the bill's lack of clarity, confusion about what companies are covered, what triggers illegality, how provisions will benefit Chinese competitors, and how provisions will lead to the exposure of data and IP. Moreover, it was correctly noted that the bill is more about protecting competitors rather than consumers, and it will provide federal regulators with expansive new powers."

Krisztina Pusok
American Consumer Institute

"Increased risks for user data privacy and security. The designated covered platforms cannot 'materially restrict or impede a business user from accessing data generated on the covered platform,' and would not be able to impose strict terms and conditions on small businesses that use the platform. Given that large platforms operate sophisticated cybersecurity programs and offer substantial data privacy protections, mandating smaller companies with fewer protections to be given access to consumer data would mean that consumer data would be at increased risk for privacy and security breaches;"

"The bill would make it difficult for small businesses to access online marketplaces, which have been vital for their growth and success. The alternative for small businesses would be to set up their own platforms for selling goods and services, which could be extremely costly. This added cost would undoubtedly raise questions about the financial viability of the large number of small businesses, startups, and entrepreneurs that currently are able to access a large pool of consumers on online marketplaces at a low cost."

Paul Lekas**Software and Industry Information Association**

"If enacted, S.2992 will have far reaching consequences for the U.S. economy. It rewrites some of the most basic assumptions of antitrust law, and will have direct effects on all American consumers and virtually all American businesses. It would force consumers to pay more for free or low-cost services they rely on every day and set inconvenient barriers to access these services. It would restrict the ability of small and medium-sized businesses to access tools essential to reaching customers and managing operations. This will increase the costs of doing business and result in higher prices for consumers. Moreover, if enacted, S.2992 will have consequences for longer term U.S. national security and the global competitiveness of U.S. companies."

Matt Schruers**Computers & Communications Industry Association**

"This bill still disregards the principles that have governed the U.S. market economy, and led to a successful tech industry. It tosses out previous consumer-focused considerations and instead jeopardizes popular products and services."

"Even as this legislation is being rushed to a markup, more experts are questioning the wisdom in hamstringing a few U.S. companies, forcing them to share data and other information with foreign rivals. That may work as a political strategy, but it is not a sound economic or security strategy."

Adam Kovacevich**Chamber of Progress**

"We heard enough reservations from senators to make it clear that this legislation is not ready for the Senate floor."

"The problems that Democrats are raising aren't just tweaks – they are fundamental issues with how the bill could impact consumers, competitiveness, and security."