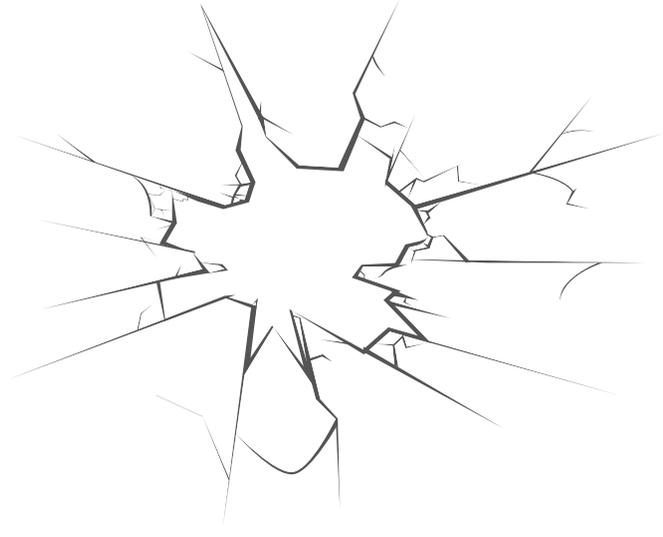


**Senator Lee, Experts:
AICOA RAISES SERIOUS
CONCERNS FOR
CONSUMER
CONVENIENCE AND
DATA SECURITY**



(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 Lee expressed strong concerns:

"I believe strongly in the adage that we've gotta first do no harm, and in order to determine that we are doing no harm we must understand the legislation. This thing has not received the airing that it needs."

"The bill results, as drafted, in the removal of popular products and services that have benefited consumers."

"How will the interoperability requirements impact cybersecurity and privacy? Will judges interpret the bill to protect consumers – or individual competitors? It's an important question given that U.S. antitrust law, our competition policies in this country, have always focused, to our great benefit, on protecting competition itself. Protecting competition, with an eye towards the consumer. The minute we start focusing on competitors rather than competition and consumers, is the minute we could really end up with a very different product and we really have to be careful about doing that."

Experts agree:

Mikolaj Barczentewicz

University of Surrey and International Center for Law and Economics

"All U.S. bills considered here introduce some interoperability mandates and none of them do so in a way that would effectively safeguard information privacy and security."

"Both ACIOA and AICOA allow for affirmative defenses that a service provider could use if sued under the statute. While those defenses mention privacy and security, they are narrow and would not prevent service providers from incurring significant litigation costs. Hence, just like the provisions of the DMA, they would heavily incentivize covered service providers not to adopt the most effective protections of privacy and security."

Keith Kratch

Former Under Secretary of State for Economic Growth, Energy, and the Environment

"The first thing we got to make sure is that we don't handcuff our businesses. And I know there is some legislation that says things like 'software companies have to always open up their interfaces'. That means the Chinese can always get the data. Or that you can't make an acquisition. We have to be careful."

Wayne Brough

R Street Institute

"AICOA's restrictions lower the overall level of competition in the marketplace, leaving consumers worse off while reducing innovation. The legislation assumes that rival companies will step into the breach and fill new niches as markets evolve, but it must be remembered that the research and development (R&D) budgets of the covered platforms are significantly larger than the budgets of smaller firms. Restricting the ability of covered platforms to invest in changes to their products or in other lines of business on their platforms will have an adverse effect on innovation. At the same time, rules that fragment the existing online ecosystem can generate higher costs and reduce consumer welfare."

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."

Jeffrey Westling and Juan Londoño

American Action Forum

"Further, as more third parties gain access to these stores and services, malicious actors could find new avenues to reach unsuspecting consumers, undermining their security and privacy. This in-turn would lower consumer trust in the marketplace or service, hurting smaller firms and sellers who rely on the authority derived from being in that marketplace or store. If, for example, a consumer can no longer value the reputability that comes with being admitted to a service, consumers would just go to large, well-known brands instead of smaller sellers and vendors with which the consumer has no existing relationship. While intending to help these businesses and services, the bill would instead make it harder for them to compete, leaving consumers with worse options at higher costs."

Grover Norquist
Americans for Tax Reform

"S. 2992 shifts antitrust law away from the long-held consumer welfare standard, which protects consumers from harm, toward a European-style approach that protects individual competitors in a given market. This legislation bans companies over a government-determined size from selling or providing private-label products on their own platforms, a practice beneficial to consumers but negatively branded as 'self-preferencing.'"

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."

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."