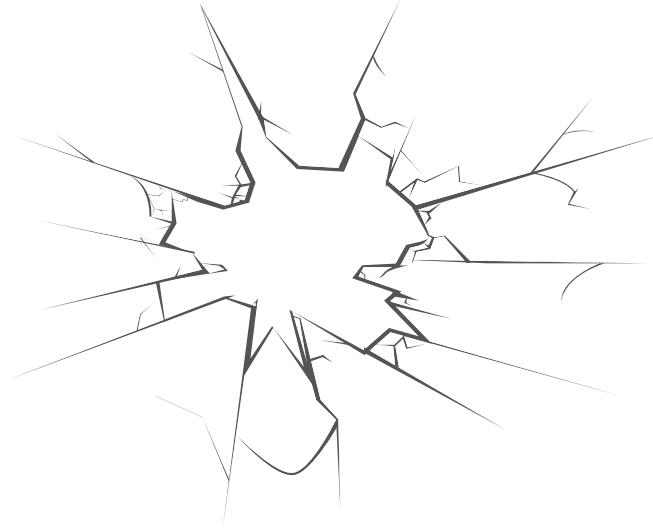


**Senator Padilla, Experts:**

## **AICOA RAISES SERIOUS CONCERN FOR CONSUMER CONVENIENCE AND CONTENT MODERATION**



(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 Padilla expressed strong concerns:**

"I'm not yet convinced that this bill as currently drafted will actually provide the net benefit to consumers that we're seeking."

"This is particularly troubling - this bill may hamper the efforts of platforms to address the spread of hate speech, and misinformation, and disinformation online that have caused so many recent problems for our democracy. For example, Section 3(a)(3) on page 9, makes it illegal for covered platforms to discriminate in the application or enforcement of their terms of service among 'similarly situated business users.' Now this provision can be a gift to bad actors seeking to prevent platforms from blocking business users that pedal hate speech. Or imagine election disinformation."

"Why distinguish between Amazon Marketplace and Walmart Marketplace if the practices are comparable? A 10 billion dollar company vs a 100 billion dollar company - they both have economic significance. If the concern is that self-preferencing - the activity, the practice - is bad, when these few companies do it because of their dominance, then isn't it also bad when other large firms beyond these five adopt these same practices?"

"I respect that many consumers like the convenience of self-preferencing that enables them to type something into a search engine and receive answers to their queries right then and there without having to go through additional clicks or additional links. This is now a staple feature across search engines today. Now this may be a simple example, but a lot of what has powered technological innovation over the last couple of decades has been the power and convenience of integrated services working together to the consumer's benefit. But given the broad language in this bill, here's a question: Is this committee willing to trust regulators and courts to crack down on harmful self-preferencing practices while allowing activity that benefits consumers?"

## **Experts agree:**

### **Carmen Scurato** **Free Press**

"This provision could require platforms to host hate speech and other harmful content targeting Black and Brown people, the LGBTQIA+ community, women, immigrants, Indigenous people and other targeted populations. It opens the door to arguments that covered platforms are unlawfully discriminating against hate-and-disinformation purveyors by taking them down. State AGs and future FTC officials charged with enforcing this bill could easily but falsely paint apps like Parler or businesses like Infowars as 'similarly situated' to other apps and sites that remain available on the covered platforms."

### **Berin Szóka and Corbin Barthold** **Tech Freedom**

"Here, what is important to note is that civil penalties create an additional, greater constitutional problem when they magnify the chilling effect of unclear laws on the exercise of editorial discretion. The threat of large penalties may exert a significant in terrorem effect over platform owners, causing them to refrain from enforcing their terms of service, afraid of those that might violate them but then sue if they suffer consequences."

### **Malena Daley** **Progressive Policy Institute**

"The disregard for the bill's implications regarding consumer welfare raises an important question: Who is antitrust legislation meant to benefit? In theory, promotion of competition on online platforms may lower prices and increase choice, but the line of thinking promoted by this bill turns a blind eye to the reality of how users and businesses engage with internet services. For consumers, integrated online services are a valued feature of the products provided by platforms. By taking this integration away or requiring that it be offered at cost, Americans who depend on these services will be left worse off with the passage of this bill."

### **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."