

AICOA Is a Mystery Box on Content Moderation

Last year, the American Innovation Choice Online Act (AICOA) failed to earn the 60 votes needed to pass the Senate because of its basic, fundamental flaws, including fierce disagreement from senators on both sides of the aisle about how – or if – the bill would change rules surrounding content moderation. Despite this fundamental issue, the bill’s sponsors are on the path to introduce a near carbon copy of AICOA.

Depending on who you ask, AICOA both does and does not affect how platforms can moderate content. Even the bill’s own supporters can’t seem to agree, leaving the American people to find out once Congress passes it.

Here’s why AICOA raises serious concerns for content moderation:

The bill’s key sponsors can’t agree on whether the bill would affect content moderation.

Depending on who you ask, AICOA both *does* and *doesn’t* regulate content. So, which is it?

Democrats say the bill won’t affect content.

- In a June 2022 press conference, Senator Klobuchar [declared](#) that the bill “is about competition, it’s not focused on content.”
- Congressman David Cicilline, the primary sponsor of AICOA’s House companion bill, added in a press conference that there “is nothing in this bill that would in fact, make it more difficult for platforms to have in place content moderation policies.”

Republicans say the bill will affect content. They want to use the bill to protect conservative speech from the perceived bias of tech companies.

- Senator Chuck Grassley, AICOA’s lead Republican sponsor in the Senate, has [stated](#) that the bill will affect content moderation. Arguing in favor of AICOA, Senator Grassley stated that “this (bill) is the best way to address the problems of big tech’s power over what we buy, what we see, what we read, what we say, online.”

- Congressman Ken Buck, the lead Republican sponsor of AICOA's House companion bill, has [stated](#) that he sees content moderation as a key piece of the legislation. When discussing AICOA in June of 2022, Congressman Buck said that he “really care(s) about this issue for another reason and that is speech.” He has also argued that “we have not addressed the threat to our democracy, the threat to free speech, that big tech poses.”

Senate Democrats expressed concern that the bill would promote hate speech online and requested an amendment to specifically say that the bill would not cover content moderation. There is a clear disconnect between AICOA's supporters on how the bill would impact a platform's ability to moderate content.

- Senators Brian Schatz, Ron Wyden, Ben Ray Lujan, and Tammy Baldwin sent a [letter](#) sent to Senator Klobuchar over the summer urging her to amend Section 3(a)(3) of AICOA to state that “nothing in section 3(a)(3) may be construed to impose liability on a covered platform operator for moderating content on the platform or otherwise inhibit the authority of a covered platform operator to moderate content on the platform...”
- The letter notes that “it appears that the bill would also hinder content moderation practices, such as the application of community guidelines and policies, which are used to remove hate speech and fight misinformation online. We are concerned that, unless it is clarified, the bill would supercharge harmful content online and make it more difficult to combat.”

Republicans oppose this clarification exempting content moderation from the bill - they want to keep the ambiguity that the bill *could* prevent content moderation.

- Senator Grassley's office [pushed back](#) on this proposed amendment and indicated that its addition to AICOA would cause Republicans to drop their support of the bill. A spokesman for Senator Grassley's office said that “type of addition is a nonstarter and can't be included.” He warned that the amendment “would lose Republican support for the bill.”

Strangely, Congressman Cicilline [wrote](#) a long legal analysis that the amendment wasn't actually needed because the bill is already clear in not covering content moderation

- The bill “...will not disturb current law related to content moderation or hinder content-moderation practices online.”

However, many leading internet and content moderation legal experts agree that the bill poses serious content moderation issues.

- Experts agree, as a *Washington Post* [op-ed](#) from law professors Jane Bambauer and Anupam Chander illustrates: "[T]he bills would hand the makers of services and apps that give free rein to hate speech and disinformation a powerful weapon to use in court...The Klobuchar-Grassley bill authors recognize that it could affect moderating activity by platforms. The bill, therefore, explicitly excludes from its definition of unlawful activity any reasonable actions the platforms take to protect the copyrights and trademarks of others. Unfortunately, actions motivated by corporate responsibility and designed to protect against hate speech, harassment or misinformation don't receive similar protection."
- And this [letter](#) from the Center for Democracy and Technology outlines the same issue: "Some of the protections given to platform business users could unduly interfere with the platforms' responsible efforts to curb hate speech, disinformation, or other abusive content, injecting the government into second-guessing these decisions and impeding platforms' ability to counter abuse of their services."
- Free Press Action agrees, as they stated in reaction to the letter from Sens. Schatz, Wyden, Lujan, and Baldwin: "The problem with the current draft of Senator Klobuchar's bill is that it wouldn't just ban conduct that preferences these platforms' own sites and services. It could subject these companies to litigation for deplatforming any business that traffics in hateful, racist, violent or otherwise harmful content. The latest version of the legislation potentially subjects the largest platforms to lawsuits for removing and reducing the reach of hate speech and other dangerous content. With this powerful statute in hand, future federal regulators or state attorneys general could very easily argue that removing apps like Parler and Omnicore or content from Infowars is unlawful. They could claim 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."

Now, as the bill's co-sponsors prepare to pursue the deeply-flawed policies as outlined in the previous American Innovation and Choice Online Act, it's time for Congress to answer: Does AICOA impact a platform's ability to moderate content, or does it not?