



January 19, 2022

VIA EMAIL

Senator Dick Durbin  
Chairman  
Committee on the Judiciary  
711 Hart Senate Office Building  
Washington, DC 20510

Senator Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
135 Hart Senate Office Building  
Washington, DC 20510

Senator Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
Committee on the Judiciary  
425 Dirksen Senate Office Building  
Washington, DC 20510

Senator Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
Committee on the Judiciary  
361A Russell Senate Office Building  
Washington, DC 20510

**Re: The American Innovation and Choice Online Act (S.2992)**

Dear Chairman Durbin, Ranking Member Grassley, Chairwoman Klobuchar, and Ranking Member Lee:

On behalf of the Software & Information Industry Association (SIIA), we write regarding the American Innovation and Choice Online Act (S.2992) to urge the Senate Judiciary Committee to hold substantive hearings on the legislation before proceeding with markup.

SIIA is the principal trade association for the software and digital information industries worldwide. Our members include over 450 companies reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide, and companies specializing in data analytics and information services.

SIIA and our members support balanced and targeted legislative and regulatory measures designed to maintain and foster a healthy digital ecosystem. As the only association representing a diverse array of technology companies across the information landscape, SIIA supports legislation designed to promote healthy innovation, a competitive marketplace, and consumer welfare. We support enforcement of antitrust and consumer protection laws to advance these goals.

We do not believe that S.2992 will achieve these objectives. If enacted, S.2992 would usher in the most significant changes to U.S. antitrust law and policy in decades. It would create new, unvetted theories of liability that go beyond those recognized by the Sherman, Clayton, and Federal Trade Commission Acts. Its effects will touch every American and have

significant ramifications for the U.S. economy and the global competitiveness of U.S. businesses. At a minimum, S.2992 raises serious evidentiary and analytical questions that should be addressed before the Senate proceeds with markup of the bill.

We want to highlight a few notable areas of concern for U.S. consumers, businesses, and innovation that would benefit from public hearings and expert economic analysis.

First, by appearing to target a specific group of companies, the bill would create a new set of winners – those corporate interests not considered to be “covered platforms” (which includes countless large companies). We do not believe this would level the playing field as much as shifting certain economic benefits arising out of the digital economy from one set of large companies to another.

Second, we believe the legislation is likely to hurt both consumer welfare and small- and medium-sized businesses. As one example, the rules on “self-preferencing” are likely to force consumers to pay more for free or low-cost services they rely on every day and set inconvenient barriers to access these services. They would also restrict the ability of small- and medium-sized businesses to access tools essential to reaching customers and managing operations. This likely will increase the costs of doing business and result in higher prices for consumers. The legislation would hurt innovation by preventing companies from pursuing new product development or lines of business to offer choice and better pricing to consumers, with downstream effects on start-ups and small- and medium-sized businesses that rely on low-cost products and services.

Third, the legislation also has ramifications for national security and geopolitical competition that warrant fulsome consideration by the Senate. By focusing on a handful of U.S. based companies, the legislation would, in effect, subsidize innovation by foreign-based companies, particularly those Chinese companies that rival U.S. companies in scale and advanced consumer technology products and services. In this sense, the legislation would undermine core objectives of the United States Innovation and Competition Act of 2021 (S.1260), which has already passed the Senate with bipartisan support. This is especially concerning in areas critical to national security where U.S.-based technology companies targeted by S.2992 currently have global advantages, such as in artificial intelligence. In addition, in the short term, restrictions on covered platforms’ activities would undermine current U.S. government efforts to shore up the cybersecurity infrastructure of the internet and combat the rising spread of misinformation.

Fourth, we have concerns that S.2992 will create new challenges with respect to individuals’ online privacy in the absence of comprehensive federal privacy legislation that governs how companies can use consumers’ data. For example, S.2992 would make it more difficult for covered platforms to provide privacy protections to their users because of restrictions on prioritizing their own products or services; this could erode critical privacy protections that consumers rely on daily to protect their information. This privacy concern alone is an important issue that would benefit from a public hearing.

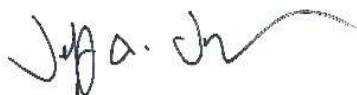


We would encourage members of the Committee to build on the bipartisan spirit that seems to underlie S.2992 to support ongoing, bicameral efforts to pass a comprehensive privacy law. Such a law would address many concerns expressed by Congress and the public about the lack of checks on how consumer data is used, provide needed clarity for businesses and consumers alike, and foster a stronger innovation environment in the United States while maintaining our global competitiveness.

We are at a unique moment politically when, after years of debate, there appears to be bipartisan and bicameral support for comprehensive federal privacy legislation that will provide strong and meaningful consumer protections (such as individual rights to notice, access, control, correction, deletion, and portability), permit socially beneficial uses of consumer data - particularly those involving publicly available information—and promote innovation and competition in the American economy.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Joseph".

Jeff Joseph, President

A handwritten signature in black ink, appearing to read "Paul Lekas".

Paul Lekas, SVP, Global Public Policy

Software & Information Industry Association (SIIA)

