

Carl Szabo, Vice President and General Counsel  
1401 K St NW, Suite 502  
Washington, DC 20005  
202-420-7485  
[www.netchoice.org](http://www.netchoice.org)

March 2, 2021

RE: **Opposition to S 551 unfair trade practices for social media websites**

We respectfully ask that you **not** advance S 551, because it:

- Impedes the ability of platforms to remove terrorist recruitment, pornography, and dangerous content.
- Makes it more difficult for service providers to block SPAM.

S 551 discourages the moderation of content we don't want on our platforms and will result in many of the problems we outline below.

## **S 551 impedes the ability of websites and platforms to remove terrorist recruitment, pornography, and dangerous content**

Today, online websites and platforms take significant steps to remove terrorist recruitment, pornography, and dangerous content from their sites. In just the six-months from July to December 2018, Facebook, Google, and Twitter took action on over 5 billion accounts and posts.<sup>1</sup> This includes the removal of 57 million instances of pornography. 17 million instances of content related to child safety.

Yet the removal of content related to extremist recruitment, pornography, and child safety is impeded by S 551. This is because it forces platforms to set explicit criteria they will use "in determining whether to disable or suspend a user's social media website account" and to notify users with an explanation of why their account was taken down in the case of a removal. This locks social media platforms into a specific content moderation regime and greatly limits their ability to respond quickly and effectively in the face of emerging circumstances.

Imagine an extremist group making posts that simply read, "Join us to help America." Blocking or removing their account would be more difficult under S 551, as platforms likely would not have criteria that specifically prohibit this type of content.

There are also things like the "Tide Pod Challenge" and the "Salt and Ice Challenge" that may not clearly violate any specific standard set by the platforms, but still need to be moderated as they put the safety of children at considerable risk. The provisions in this bill would make it harder for platforms to respond rapidly as these dangerous and objectionable movements emerge.

The end result is that websites and platforms will err on the side of leaving up lewd, lascivious, dangerous, and extremist speech and content, making the internet a much more objectionable place to

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<sup>1</sup> See *Transparency Report*, at <http://netchoice.org/wp-content/uploads/Transparency-Report.pdf>

be. Further, users are already protected from unfair trade practices and the government can currently bring suits against the platforms if they truly believe these companies are engaging in unfair practices.

## **S 551 makes it difficult for providers to block SPAM**

Today, platforms engage in robust content blocking of SPAM. But this blocking of not only unwanted but invasive content would be far more difficult under S 551, as it would need to violate some explicit criteria previously set by the specific platform at issue.

For decades, service providers have fought bad actors to keep our services usable. Through blocking of IP and email addresses along with removing content with harmful keywords, our services are more useful and user friendly. But services couldn't do this type of blocking under S 551 unless they had specific criteria that cover the content in question.<sup>2</sup> Defenders of the bill may argue that platforms could still adopt a standard that broadly prohibits SPAM, but then each case of removal would subject the platforms to legal action based on the specific facts and content at issue. SPAM is not uniform in nature and can be difficult to clearly define. As such, platforms would likely err on the side of leaving up more SPAM than they would otherwise.

Diminishing platform's ability to remove SPAM content would contradict Congress's intent to "remove disincentives for the development and utilization of blocking and filtering technologies."<sup>3</sup>

Because it restricts the ability of social media websites to moderate objectionable content and block SPAM, we respectfully ask you to **oppose S 551**.

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

*NetChoice works to make the Internet safe for free enterprise and free expression. [www.netchoice.org](http://www.netchoice.org)*

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<sup>2</sup> See, e.g. *Holomaxx Technologies Corp. v. Microsoft*, 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (That case involved an email marketer sued Microsoft, claiming that the SPAM blocking filtering technology Microsoft employed was tortious.)

<sup>3</sup> *Id.* at 1105 (citing 47 U.S.C. § 230(b)(4)).