

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NETCHOICE, LLC d/b/a NetChoice,)
a 501(c)(6) District of Columbia organization,)
)
and)
)
COMPUTER & COMMUNICATIONS)
INDUSTRY ASSOCIATION d/b/a CCIA, a)
501(c)(6) non-stock Virginia Corporation,)
)
Plaintiffs,)
)
v.)
)
KEN PAXTON, in his official capacity as)
Attorney General of Texas)
)
Defendant.)
_____)

Civil Action No. 1:21-cv-00840-RP

**Exhibit A –
CCIA’s
Declaration**

**IN THE UNITED STATES DISTRICT COURT
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NETCHOICE, LLC, d/b/a NETCHOICE, a
501(c)(6) District of Columbia organization;
and COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION d/b/a CCIA, a
501(c)(6) non-stock Virginia corporation,

Plaintiffs,

v.

KEN PAXTON, in his official capacity as
Attorney General of Texas,

Defendant.

Civ. Action No. 21-cv-00840

**DECLARATION OF CCIA IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Matthew Schruers, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the President of the Computer & Communications Industry Association (“CCIA”). I have worked at the organization for sixteen years. Upon joining the Association, I focused on legal, legislative, and policy matters, before taking on the roles of Chief Operating Officer and President. In each of these capacities, I have worked closely and communicated often with CCIA members regarding how public policy proposals affect their businesses, operations, and relationships with their users.

2. Trust and safety operations, and content moderation specifically, is an important area of CCIA’s work and a constant focus for many of our members. As a result, I spend significant time understanding the content-related policies and practices of CCIA’s members, as well as monitoring and analyzing the legislative and policy proposals that affect the critical business

function of trust and safety. I also interact regularly with trust and safety experts throughout the industry, and have an understanding of the challenges faced by trust and safety professionals. I have been tracking and evaluating the various legislative proposals in Texas bearing on our members' editorial and curatorial discretion—including House Bill 20 (“H.B. 20”) and its companion bills and predecessors—since before its passage so as to advise CCIA members on its provisions and impact on their businesses.

3. The statements contained in this declaration are made upon my personal knowledge. I am over 18 years of age and am competent to make the statements set forth herein.

About CCIA

4. CCIA is an international, not-for-profit membership association representing a broad cross-section of companies in the computer, Internet, information technology, and telecommunications industries. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks, and advocated for the interests of the world's leading providers of technology products and services before governments and the courts.

5. CCIA's membership includes computer and communications companies, equipment manufacturers, software developers, service providers, re-sellers, integrators, and financial service companies. Currently, CCIA's members include: Amazon, Apple, BT Group (British Telecommunications), Cloudflare, Dish Network, eBay, Eventbrite, Facebook, Google, Intel, Intuit, McAfee, Mozilla, Newfold Digital, Pinterest, Powerhouse Management, Rakuten, Red Hat, Samsung, Shopify, Stripe, Twitter, Uber, Vimeo, Waymo, Wolt, Yahoo, and Zebra.

6. Because of the broad definition of “social media platform” within the recently enacted H.B. 20, a number of CCIA's members would qualify even though their services would not be considered as such by the general public. Such members span various sectors and products, and enable billions of users around the world to create and share using their products, whether to

facilitate work, study, prayer, socialization, commerce, or communications. These companies moderate and curate what is displayed on their services as a vital part of operations, and some must manage a massive and constantly expanding amount of content in order to provide valuable products and tools for their users.

7. Because content moderation is central to the operations of these members, issues surrounding trust and safety constitute a significant part of CCIA's policy and advocacy work. To that end—among our other endeavors and programs in this area—CCIA is currently incubating a new non-profit organization called the Digital Trust & Safety Partnership.¹ The members of this new partnership include CCIA members and others dedicated to identifying and preventing harmful content online.²

8. This new organization aims to develop and iterate upon industry best practices for, among other things, the moderation of third-party content and behavior, with the goal of ensuring a safer and more trustworthy Internet. The Partnership's objectives include the facilitation of internal assessments, and subsequently independent third-party assessments, of participants' implementation of identified best practices for promoting the safety of their users and the online communities that they maintain. The organization balances these collective goals with the recognition that each of its member companies has its own values, product aims, digital tools, and human-led processes for moderating the extremely broad range of human expression they facilitate.

¹ Digital Trust & Safety Partnership, <https://dtspartnership.org/>.

² *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), <https://www.axios.com/tech-giants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

Content Moderation: How It Works and Why It Matters

9. The online services provided by many CCIA members display or support a wide variety of user-created content in myriad forms—including text, videos, audio clips, and photographs. The scale of users and activity on these services is significant. Facebook³ and YouTube⁴ each has over two billion users. Every day, users watch over a billion hours of video on YouTube.⁵ Over 100 billion messages are shared every day on Facebook.⁶ Billions of searches are run on Google every day.⁷ More than 500 hours of content are uploaded to YouTube every *minute*.⁸ Amazon has more than 1.9 million small- and medium-sized businesses selling on its online store,⁹ and countless user-generated reviews are posted on the listings for the products of those businesses and others.¹⁰

10. The material uploaded to these services comes from all over the world and is incredibly diverse. The services enable and provide a forum for the height of human thought and creativity: material that is culturally significant, highly informative, brilliantly funny or satirical,

³ *Hearing Before The United States Senate Judiciary Committee Subcommittee on Privacy, Technology, and the Law* (Apr. 27, 2021), <https://www.judiciary.senate.gov/imo/media/doc/Bickert%20Testimony.pdf>.

⁴ *YouTube has over 2 billion monthly logged-in users*, YouTube, <https://blog.youtube/press/>.

⁵ *Id.*

⁶ *Company Info*, Facebook, <https://about.facebook.com/company-info/>.

⁷ *Zeitgeist 2012*, Google, <https://www.internetlivestats.com/google-search-statistics/>.

⁸ *YouTube has over 2 billion monthly logged-in users*, YouTube, <https://blog.youtube/press/>.

⁹ *2020 Letter to Shareholders*, Amazon (Apr. 15, 2021), <https://www.aboutamazon.com/news/company-news/2020-letter-to-shareholders>.

¹⁰ *Update on customer reviews*, Amazon (Oct. 3 2016), <https://www.aboutamazon.com/news/innovation-at-amazon/update-on-customer-reviews>.

and politically engaging. To raise just a few examples of notable uses of members' services during the ongoing public health crisis:

- a. When the COVID-19 pandemic struck, and communities implemented stay-at-home orders, many small businesses turned to social media services and online tools to continue operations, engage current and prospective customers, and cultivate loyalty in a socially distant context.¹¹ Many small businesses who succeeded in the "shut-in economy"¹² did so by embracing social media services and digital tools.¹³
- b. Amid a quarantine of indeterminate length, schools and public services both turned to social media tools to meet the needs of distance-education students and citizens with special needs, such as live captions at local government press conferences on public health via Facebook Live,¹⁴ and live captions for remote learning via Google Meet and Zoom.¹⁵ These virtual tools helped make life during social distancing more accessible and inclusive for people who are deaf or English-language

¹¹ *5 Small Business Owners Reveal How They Are Marketing On Social Media During COVID-19*, U.S. Chamber (Sept. 3, 2020), <https://www.uschamber.com/co/good-company/growth-studio/promoting-business-on-social-media-during-pandemic>.

¹² *As COVID-19 Continues, Online Commerce Rises*, Project DisCo (Dec. 14, 2020), <https://www.project-disco.org/competition/121420-as-covid-19-continues-online-commerce-rises/>.

¹³ *See, e.g.*, Allison Hatfield, *7 ways technology is helping small businesses during COVID-19*, Dallas Morning News (Nov. 20, 2020), <https://www.dallasnews.com/business/2020/11/20/7-ways-technology-is-helping-small-businesses-during-covid-19/>.

¹⁴ *Powered by AI, new automated captions are helping people receive news and critical updates*, Facebook (Sept. 15, 2020), <https://tech.fb.com/powered-by-ai-new-automated-captions-are-helping-people-receive-news-and-critical-updates/>.

¹⁵ *Google Meet expands live captions to 4 more languages, extends unlimited meetings*, ZDNet (Dec. 15, 2020), <https://www.zdnet.com/article/google-meet-expands-live-captions-to-4-more-languages-extends-unlimited-meetings/>.

learners,¹⁶ as well as helping families communicate when they are apart.¹⁷ Social media has also been a tool for mutual aid in Texas, both during COVID and when Texans lost power and heat during a storm in February and turned to digital tools like Twitter, Google Forms, and Venmo.¹⁸

- c. Social media and digital services are also a critical tool as learning returns to the classroom. For instance, in 2019 an elementary school teacher in Houston, Texas founded the #ClearTheList movement to help teachers clear their online wish lists from platforms like Amazon and Donors Choose to help teachers defray their personal expenses on classroom items, which now includes new technology for virtual learning and PPE.¹⁹ Social media has also enabled Texas country musicians to raise money for teachers in Texas and Oklahoma using the hashtag #TroubadoursForTeachers, especially as they've been home during COVID.²⁰

11. By contrast, some of the material posted on online services is the polar opposite. Because almost anyone can create an account and post content on certain social media services, users can attempt to submit content ranging from dangerous, illegal, and abusive, to things that are

¹⁶ *Live captions come to Meet in four new languages*, Google (Dec. 15, 2020), <https://blog.google/products/meet/live-captions-new-languages/>.

¹⁷ *A CODA story: Why accessible technology matters*, Google (Apr. 22, 2021), <https://blog.google/outreach-initiatives/accessibility/tonys-story-accessibility-features/>.

¹⁸ Marissa Martinez, *Texans used mutual aid to help their communities through a devastating winter storm* (Feb. 23, 2021), <https://www.texastribune.org/2021/02/23/mutual-aid-texas-storm/>.

¹⁹ Allison Slater Tate, *School supplies: Help teachers #ClearTheList with PPE, wipes*, TODAY (July 30, 2020), <https://www.today.com/parents/school-supplies-help-teachers-clearthelist-ppe-wipes-t188220>.

²⁰ Katy Blakey, *Texas Country Artists Lend Their Voices to Help Teachers*, NBC-DFW (Aug. 30, 2021), <https://www.nbcdfw.com/news/local/texas-country-artists-lend-their-voices-to-help-teachers/2730463/>.

just undesirable or annoying. A few examples of content shared on the darker side of the Internet, which trust and safety teams work around the clock to address, include:

- a. Video footage of the mass shootings targeting a mosque in Christchurch, New Zealand that was recorded by the gunman and broadcast online, which despite being removed within minutes, resurfaced on various other services, leading to extensive efforts across the industry to remove the videos.²¹
- b. Videos and propaganda posted by ISIS to recruit American teenagers or otherwise persuade them to adopt its extremist ideology.²²
- c. Fraud schemes that specifically target older adults online; for instance, by contacting a senior through social media, building a relationship, and then asking for money.²³
- d. Sexual, graphic, or otherwise disturbing content that is lawful but may be inappropriate for certain audiences or contexts, such as on gaming platforms used by children.²⁴

²¹ *Update on New Zealand*, Facebook (Mar. 18, 2019), <https://about.fb.com/news/2019/03/update-on-new-zealand/>; Olivia Solon, *Six months after Christchurch shootings, videos of attack are still on Facebook*, NBC News (Sept. 20, 2019), <https://www.nbcnews.com/tech/tech-news/six-months-after-christchurch-shootings-videos-attack-are-still-facebook-n1056691>.

²² Dorian Geiger, *This Is How ISIS Uses Social Media to Recruit American Teens*, Teen Vogue (Nov. 20, 2015), <https://www.teenvogue.com/story/isis-recruits-american-teens>.

²³ *Common Scams That Target the Elderly*, Senior Living (Feb. 9, 2021), <https://www.seniorliving.org/research/common-elderly-scams/>.

²⁴ *Roblox tries to deal with adult content on a platform used by many kids (2020)*, Trust & Safety Foundation (Apr. 19, 2021), <https://www.tsf.foundation/blog/roblox-tries-to-deal-with-adult-content-on-a-platform-used-by-many-kids-2020>.

- e. Content that promotes or glorifies self-harm, including suicide, or that encourages young people to engage in dangerous conduct, such as consuming detergent pods or other bizarre behavior.²⁵

12. The companies my association represents, and many others like them,²⁶ therefore have an obvious business need to address certain kinds of content and behavior, as well as to take action against abusive users who repeatedly or flagrantly violate their rules or post illegal, dangerous, or offensive material. Without the ability to respond to that content per the company's stated policies and terms of service (along with limiting the ability of repeat offenders to continue abusing the company's services), many services would be flooded with abusive, objectionable, and in some cases unlawful material, drowning out the good content and making their services far less enjoyable, useful, and safe.

13. For that reason, CCIA members have rules governing what kinds of material and uses are, and are not, permitted.²⁷ That is also why these services put significant amounts of time, resources, personnel, and effort into developing sophisticated trust and safety operations to protect

²⁵ Chaim Gartenberg, *YouTube is taking down Tide Pod Challenge videos and oh my god don't eat laundry pods*, The Verge (Jan. 17, 2018), <https://www.theverge.com/2018/1/17/16902990/youtube-tide-pod-challenge-video-take-down-community-guidelines-removal>.

²⁶ E.g., Drew Harwell, *Rumble, a YouTube rival popular with conservatives, will pay creators who 'challenge the status quo'*, Washington Post (Aug. 12, 2021), <https://www.washingtonpost.com/technology/2021/08/12/rumble-video-gabbard-greenwald/>; ArLuther Lee, *Team Trump back in the game with new social media app called GETTR*, The Atlanta Journal-Constitution (July 2, 2021), <https://www.ajc.com/news/team-trump-back-in-the-game-with-new-social-media-app-called-gettr/L4N5FCAINBF6ZNMU4NBBMP37RA/>.

²⁷ E.g., *Pinterest Community Guidelines*, Pinterest, <https://policy.pinterest.com/en/community-guidelines/>; *Facebook Community Standards*, Facebook, <https://www.facebook.com/communitystandards/>; *The Twitter Rules*, Twitter, <https://help.twitter.com/en/rules-and-policies/twitter-rules/>; *YouTube Community Guidelines*, YouTube, <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>.

users and the public. The scope of these efforts reflects the sheer scale and volume of user-generated content posted on popular online services.

14. Content moderation takes many forms, including both human review and the use of digital tools that rely in part on algorithms (or other automated sorting). Moderation sometimes requires removing objectionable or illegal content or terminating the accounts of users who post it. But far more frequently, it involves context-specific decisions about how to arrange and display content, how best to recommend content to users based on their interests, and how easy it should be to access certain kinds of content. Instagram, for example—an image- and video-sharing service popular with younger users (which is owned by CCIA member Facebook)—has made it harder to search for graphic images involving suicide attempts and self-harm, and taken steps to stop recommending such content to users.²⁸

15. Another example of moderation is “age-gating,” whereby certain content is made accessible only to adults or teenagers but not to younger children. YouTube, for example, does this extensively.²⁹ Content that may be age-restricted includes: videos about a cannabis dispensary; material featuring people in sexually provocative poses; material using vulgar language; or videos that show violent or gory imagery.³⁰

16. In other circumstances, moderation includes giving users tools to decide for themselves what content they wish to avoid, such as by obscuring potentially upsetting but clearly newsworthy information, blocking or muting other users (meaning that they no longer see that

²⁸ *Tightening Our Policies and Expanding Resources to Prevent Suicide and Self-Harm*, Facebook (Sept. 10, 2019), <https://about.fb.com/news/2019/09/tightening-our-policies-and-expanding-resources-to-prevent-suicide-and-self-harm/>.

²⁹ *Age-restricted content*, YouTube, <https://support.google.com/youtube/answer/2802167?hl=en> (“Sometimes content doesn’t violate our policies, but it may not be appropriate for viewers under 18. In these cases, we may place an age-restriction on the video.”).

³⁰ *See id.*

user’s content), making certain content inaccessible to their children, or shielding themselves from material that is likely to offend sensitive users. For instance, YouTube provides a Restricted Mode that users (or institutions such as libraries and schools) can choose to activate in order to avoid such material.³¹ Likewise, on Instagram, users have a variety of tools for controlling how they interact with other users’ content, including blocking accounts or commenters, muting an account (which stops content from that user from showing up in a feed), and creating lists of words or emojis that the user does not wish to see in the comments on his or her posts.³²

17. Content moderation can also include direct speech by service providers. Sometimes the services engage in direct speech when they have made a considered determination that particular material conveyed via their service requires additional information or context. For example, services may decide to attach warning labels, disclaimers, or general commentary informing users that certain user-submitted content has either not been verified by official sources or may contain upsetting imagery:

- a. Facebook adds “warning screens” over potentially sensitive content such as violent or graphic imagery, nudity, and posts related to suicide or suicide attempts.³³ Similarly, Twitter requires users who may legitimately intend to share violent or abusive but newsworthy content (such as news media, bloggers, or citizen journalists) to mark their accounts as sensitive, such that media can be placed behind interstitial warnings. This ensures unsuspecting users are not suddenly

³¹ *Disable or enable Restricted Mode*, YouTube, <https://support.google.com/youtube/answer/174084>.

³² *Keeping Instagram a safe and supportive place*, Instagram, <https://about.instagram.com/community/safety>.

³³ *Providing context on sensitive or misleading content*, Facebook, <https://transparency.fb.com/enforcement/taking-action/context-on-sensitive-misleading-content/>.

confronted with sensitive media, such as violent news coverage from war zones or mass shootings.³⁴

- b. YouTube adds labels to content by state-supported media channels, including flagging sources of funding—such as for videos sponsored by the Russian government.³⁵
- c. During the 2020 election, Twitter added warning labels to Tweets making claims about election results that had not been verified by official sources.³⁶

18. Other times, however, content moderation is necessary so that even the most basic online functions, like shopping or searching for local businesses or having material arranged by topic or geography, work as intended. Without prioritizing, classifying, and ordering the never-ending volume of online content, online services would have no way to deliver the content users want—or even critically need—to see. This, for example, is the essential function of Internet search engines like Google.³⁷ The ability to search is also an essential function of many other online services. Customers rely on services like eBay to search for products they want to buy, and to provide helpful information and reviews about those products; users on Facebook want and expect to be able to search for people they might know; users on Pinterest want and expect to be able to search for recipes and design inspiration according to their taste and preferences.

³⁴ *Sensitive media policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/media-policy>.

³⁵ *Greater transparency for users around new broadcasters*, YouTube, <https://blog.youtube/news-and-events/greater-transparency-for-users-around>; *State media warning can counteract the effects of foreign misinformation*, Harvard Kennedy School Misinformation Review, <https://misinforeview.hks.harvard.edu/article/state-media-warning-labels-can-counteract-the-effects-of-foreign-misinformation/>.

³⁶ *Additional steps we're taking ahead of the 2020 US Election*, Twitter, https://blog.twitter.com/en_us/topics/company/2020/2020-election-changes.html (“Tweets which include premature claims will be labeled and direct people to our official US election page.”).

³⁷ *How Google Search works*, Google, <https://www.google.com/search/howsearchworks/>.

19. Content moderation serves at least three distinct vital functions. *First*, it is an important way that online services express themselves and effectuate their community standards, thereby delivering on commitments that they have made to their communities. Content rules and enforcement actions reflect normative judgments about what will best foster the kind of environment that companies have promised to their users. Choices about whether to allow pornography, depictions of violence, or certain kinds of offensive language, for example, are all editorial expressions of the service’s own preferences—important statements about the kind of online community it wishes to foster and what speech and speakers the company wishes to associate with or avoid.

20. *Second*, content moderation is often a matter of ensuring online safety. Some content posted online unfortunately can be highly dangerous, whether to specific individuals or to the public at large. Social media companies regularly enforce their terms of service to remove material such as illegal non-consensual intimate imagery (sometimes referred to as “revenge pornography”), depictions of child sexual abuse, calls for genocide, efforts to steal people’s personal information, attempts to encourage teens to commit suicide, attempts to sell illegal weapons and drugs, content that aids counterfeiting, and efforts by foreign adversaries to manipulate the American public. Any effort that hamstringing how online services respond to these egregious communications threatens the safety of those services, their users, and the public.

21. *Third*, content moderation facilitates the organization of content, rendering an online service more useful. Imagine if a search engine presented results in a random or purely chronological order—instead of prioritizing what is most relevant. Or if an online store presented a random assortment of products or listings—instead of those products the user actively sought

out. For many digital services, the main utility they offer to users is the editorial and curatorial functions of organizing, sorting, and presenting of the vast amount of information available online.

The Importance of Content Moderation

22. A daily challenge facing many CCIA members is pursuing these goals—upholding their terms in order to protect users—while addressing a massive and ever-changing body of content that users generate. Each piece of content involves different circumstances and different potential risks, which often requires an individualized judgment by the service regarding whether it calls for moderation. Rightly or not, members of the public often associate digital services with third-party content that appears on their service. Advertisers also associate digital services with content that appears on their site, due to concerns about the indirect impact on the advertisers' brand. The reputational costs of such connections can be permanent. Thus, objectionable content that appears on a digital service—even if its presence were compelled by law—may irreparably harm the business prospects of a digital service.

23. Normative judgments about how content is moderated within the bounds of a service's policies frequently involve matters of opinion and values about which people could very well disagree. The choice of whether a violent but newsworthy video should be removed, left up, or obscured behind an interstitial warning pursuant to a service's policy on sensitive media is as equally expressive as a newspaper's calls about which stories make the front page, which editorials appear in the opinion column, and what is newsworthy, as a general matter. The difference is that online service providers are called upon to make moderation decisions on a vast scale for immense volumes of content.

24. For example:

- a. Facebook is a community of over three billion people, and over one billion “stories” (audio or video clips) are shared on its service every day.³⁸ As one would expect, that means that Facebook has to remove millions of pieces of content each year to ensure that its service is safe and enjoyable for users. In the first quarter of 2021, Facebook removed 8.8 million pieces of “bullying and harassment content,” 9.8 million pieces of “organized hate content,” and 25.2 million pieces of “hate speech content.”³⁹ Since the beginning of the pandemic Facebook has removed over 3,000 accounts, Pages and groups for repeatedly violating its rules against spreading COVID-19 and vaccine misinformation and removed more than 20 million pieces of content for breaking these rules.⁴⁰
- b. Over 500 million accounts are active daily on Instagram, where they view and/or post photos, stories, and “reels.” To keep the service safe and usable, Instagram removed 5.5 million pieces of “bullying and harassment content,” 324,500 pieces of “organized hate content,” and 6.3 million pieces of “hate speech content” in the first quarter of 2021.⁴¹
- c. There are more than 300 billion “pins” or pieces of posted content on Pinterest. Because the Pinterest community is not welcoming to pornography,⁴² between

³⁸ *Company Info*, Facebook, <https://about.facebook.com/company-info/>.

³⁹ *Id.*; *Community Standards Enforcement Report, First Quarter 2021*, Facebook, <https://about.fb.com/news/2021/05/community-standards-enforcement-report-q1-2021/>.

⁴⁰ Monika Bickert, *How We’re Taking Action Against Vaccine Misinformation Superspreaders*, Facebook (Aug. 18, 2021), <https://about.fb.com/news/2021/08/taking-action-against-vaccine-misinformation-superspreaders/>.

⁴¹ *Tell your brand story your way with Instagram*, Facebook, <https://www.facebook.com/business/marketing/instagram>; *Community Standards Enforcement Report, First Quarter 2021*, Facebook, <https://about.fb.com/news/2021/05/community-standards-enforcement-report-q1-2021/>.

⁴² *Community guidelines*, Pinterest, <https://policy.pinterest.com/en/community-guidelines>.

October and December 2020, the service took down over 2.1 million distinct images containing adult content, which amounted to nearly 50 million pins (meaning that some images were pinned by users multiple times). In addition, Pinterest removed over 1.3 million discrete images or 3.4 million pins containing spam.⁴³

- d. In the last six months of 2020, Twitter took action against 3.5 million accounts, suspended over 1 million accounts, and removed 4.5 million pieces of content. With respect to the removed content, the top three categories were (1) “hateful conduct,” which includes the promotion of violence against people on the basis of race, gender, age, and other protected characteristics (approx. 5,737,500 instances); (2) “abuse/harassment” (approx. 5,053,000 instances); and (3) “sensitive media,” including graphic violence and adult content (approx. 3,381,000 instances).⁴⁴
- e. YouTube sees 500 hours of content uploaded to its platform every minute and has a community of over 2 billion users.⁴⁵ In the last three months of 2020 alone, YouTube removed just over 2 million channels and over 9 million videos for violations of its policies, the majority of which had fewer than ten views each at the time of removal due to the use of automated processes for reviewing and removing violative content.⁴⁶ Since February 2020, YouTube has removed more than 1

⁴³ *Transparency report*, Pinterest, <https://policy.pinterest.com/en/transparency-report>

⁴⁴ Twitter Transparency Report, *Rules for Enforcement*, Twitter, <https://transparency.twitter.com/en/reports/rules-enforcement.html#2020-jul-dec>.

⁴⁵ *YouTube for Press*, YouTube, <https://www.youtube.com/intl/en-GB/about/press/>.

⁴⁶ YouTube Transparency Report, *YouTube Community Guidelines enforcement*, YouTube, <https://transparencyreport.google.com/youtube-policy/removals?hl=en>.

million videos related to dangerous coronavirus misinformation, like false cures or claims of a hoax.⁴⁷

25. The sheer number of decisions that online services are forced to make is often matched by the degree of difficulty and nuance involved in the hardest judgment calls. For certain pieces of content, there is simply no right answer as to whether and how to moderate, and any decision holds significant consequences for the service's online environment, its user community, and the public at large. To raise a few examples of such cases:

- a. Facebook generally aims to remove content that advertises marijuana. But for some pieces of content, it can be difficult to determine whether the material in question actually *is* advertising marijuana—such as when the product is obscured by packaging or resembles other products.⁴⁸
- b. YouTube generally attempts to remove content that supports Nazi ideology or white supremacy. However, its policies on restricting such content are tested by material where it is not obvious whether the content is actually supporting Nazism or, instead, historical or informative in nature. For those videos, YouTube must determine whether ambiguous discussions regarding Nazism or interviews with white supremacists serve an educational function or, instead, glorify those ideologies.⁴⁹

⁴⁷ Neal Mohan, *Perspective: Tackling Misinformation on YouTube* (Aug. 25, 2021), <https://blog.youtube/inside-youtube/tackling-misinfo/>.

⁴⁸ *F8 2019 Day 2 keynote and session videos*, Facebook, <https://engineering.fb.com/2019/05/01/ai-research/f8-2019-day-2/>.

⁴⁹ *YouTube's new policy on Nazi content results in removal of historical and education videos (2019)*, Trust & Safety Foundation, <https://www.tsf.foundation/blog/youtube-s-new-policy-on-nazi-content-results-in-removal-of-historical-and>; Michael Grosack, *A look at how we treat educational, documentary, scientific, and artistic content on YouTube* (Sept. 17, 2020), <https://blog.youtube/inside-youtube/look-how-we-treat-educational-documentary-scientific-and-artistic-content-youtube/>.

- c. Given my role within the industry, I am aware that companies beyond CCIA's membership frequently face similar problems. For example, Spotify previously announced that it would try to harmonize its values with the artists that it promoted. In practice, this included moderating or removing the portfolios of artists that engaged in reprehensible conduct, such as sexual assault. These judgment calls, however, are sensitive in nature, and prompt comparisons to other artists that are also accused of or found responsible for misconduct.⁵⁰

26. To make reasonable decisions about such content, a service needs flexibility to craft policies and rules that reflect their commitment to users and to adapt those policies to the ever-changing circumstances presented by user content. CCIA's members have never claimed that they will allow anyone to post any content without it being subject to moderation decisions. CCIA's members have always moderated content to some degree. It goes without saying that no service is able to anticipate unexpected forms of content *and* decide how to moderate each instance *in advance*. It is for that very reason that these services develop policies and rules that act as guidelines for their future moderation decisions—and within which each service has the ability to exercise discretion in specific instances.

27. The content that CCIA's members moderate does not exist in a vacuum; it is also affected by societal circumstances and/or the service's own attitudes. Because those circumstances and attitudes also evolve over time, adapting to changed circumstances, services may view their terms of service differently as they gain experience and encounter new material:

⁵⁰ *Spotify enforces hateful conduct policy, removing artists from its platform for off-platform behavior (2018)*, Trust & Safety Foundation, <https://www.tsf.foundation/blog/spotify-enforces-hateful-conduct-policy-removing-artists-from-its-platform>.

- a. Facebook, for example, has placed a greater emphasis in identifying and proactively suppressing racist content (such as depictions of blackface) and antisemitic content (such as content that denies the Holocaust or encourages the idea that Jews control the world), as it encounters more and more examples of that kind of content.⁵¹
- b. Similarly, Facebook, Instagram, Twitter, and YouTube have increasingly attempted to limit material that would encourage eating disorders or other forms of destructive self-harm.⁵²
- c. As yet another example, YouTube recently took action to limit the influence of the military in Myanmar after the military launched a coup that captured control of the government. As a result of the changing circumstances and the military's violence, YouTube prevented five television channels run by the military from conveying content via its service.⁵³
- d. Twitter's "hateful conduct policy" was updated to include "targeted misgendering or deadnaming of transgender individuals." Twitter made that change as part of a broader change to its policy on "dehumanizing language," which was expanded "to

⁵¹ *Measuring Our Progress Combating Hate Speech*, Facebook, <https://about.fb.com/news/2020/11/measuring-progress-combating-hate-speech/>.

⁵² *Tightening Our Policies and Expanding Resources to Prevent Suicide and Self-Harm*, Facebook, <https://about.fb.com/news/2019/09/tightening-our-policies-and-expanding-resources-to-prevent-suicide-and-self-harm/>; *Taking More Steps To Keep The People Who Use Instagram Safe*, Instagram, <https://about.instagram.com/blog/announcements/more-steps-to-keep-instagram-users-safe>; *Suicide and Self-harm Policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/glorifying-self-harm>; *Suicide & self-injury policy*, YouTube, <https://support.google.com/youtube/answer/2802245>.

⁵³ *YouTube Bans Myanmar Military Channel as Violence Rises*, New York Times (Mar. 5, 2021), <https://www.nytimes.com/2021/03/05/business/youtube-myanmar.html>; *YouTube removes five Myanmar TV channels from platform*, Reuters (Mar. 4, 2021), <https://www.reuters.com/article/us-myanmar-politics-youtube/youtube-removes-five-myanmar-tv-channels-from-platform-idUSKBN2AX0BQ>.

include content that dehumanizes others based on their membership in an identifiable group, even when the material does not include a direct target.”⁵⁴

28. Furthermore, many digital services are “multi-sided markets,” meaning that their business model unites distinct constituencies in transactions. Users, therefore, are not the only community whose interests these services must seek to safeguard. For ad-supported, free-to-the-user services, advertisers constitute another critical constituency. These advertisers are wary of what some refer to as “brand damage” should their products be advertised in proximity to problematic content. As a result, advertisers work closely with social media companies and other digital services to reduce the chance that their advertising dollars are perceived to support potentially harmful content or behavior.⁵⁵

29. Advertisers are not the only parties who associate expression on members’ websites and applications with members. For instance, the Mozilla Foundation has asserted that YouTube “is recommending videos with misinformation, violent content, hate speech, and scams.”⁵⁶

30. Content moderation is therefore far from static. Instead, it is a dynamic process in which the service has to account for its own values and opinions, user preferences, and what is

⁵⁴ *Hateful conduct policy*, Twitter, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>; see *How Twitter’s Ban on ‘Deadnaming’ Promotes Free Speech*, New York Times, <https://www.nytimes.com/2018/11/29/opinion/twitter-deadnaming-ban-free-speech.html>; *Creating new policies together*, Twitter, https://blog.twitter.com/official/en_us/topics/company/2018/Creating-new-policies-together.html.

⁵⁵ Martinne Geller, *Advertisers agree deal with social media on steps to curb harmful content*, Reuters (Sept. 23, 2021), <https://www.reuters.com/article/tech-advertising/advertisers-agree-deal-with-social-media-on-steps-to-curb-harmful-content-idUSKCN26E1O1>; *Facebook to develop tools for advertisers to tackle harmful content*, Reuters (Jan. 29, 2021), <https://www.reuters.com/article/us-facebook-advertising/facebook-to-develop-tools-for-advertisers-to-tackle-harmful-content-idUSKBN29Y1UJ>.

⁵⁶ Mozilla, *Mozilla Investigation: YouTube Algorithm Recommends Videos that Violate the Platform’s Very Own Policies* (July 7, 2021), <https://foundation.mozilla.org/en/blog/mozilla-investigation-youtube-algorithm-recommends-videos-that-violate-the-platforms-very-own-policies/>.

happening in the world. Succeeding at that delicate balancing act requires companies to have the freedom to evolve moderation techniques over time, both to best serve the needs of their users and to protect the online environment that they are curating. Both the online and real world change from second to second, and each company must be able to respond to those changes in real time to protect its service and users.

31. Due to the scale at which the covered online services operate, much of their moderation work must be done algorithmically—or at least with the assistance of algorithms or automated processes—in order to function.

32. The capacity to make moderation decisions algorithmically in the first instance is vitally important to many services offered by CCIA members. Not only do these tools facilitate the moderation of the incalculable volume of content online, but for some of the content that requires moderation or removal—such as graphically violent, sexual, or criminal content—time is of the essence. An important aspect of the goodwill that many members have built up with their users over time is the ability of moderators to respond quickly to halt the spread of dangerous, illegal, or otherwise inappropriate content before it becomes widespread. Making certain moderation decisions algorithmically in the first instance allows the services to respond to objectionable content in a way that preserves the user experience, promotes online safety, and helps ensure that the communications that our members’ services disseminate reflect their community values.

The Burdens Posed by H.B. 20

33. Compliance with H.B. 20’s limitations on upholding terms of service would be unduly burdensome at a minimum, and may not be technically feasible at all.

34. Millions of Texans, and billions of people worldwide, use CCIA members' services. And Texas users have access to all publicly available content on the websites and applications (subject to the settings the users have activated).

35. H.B. 20 bans "censorship" of "viewpoint." Yet all expressions contain a viewpoint, of some sort, including pro-Taliban extremist content and medical disinformation aimed at the public by foreign government propagandists.⁵⁷ And "censor" is defined to include every enforcement tool available to the covered websites and applications: "to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression."

36. This definition even includes the platforms' own speech, by prohibiting the platforms from broadly (and vaguely) "discriminat[ing]" against expression. For instance, when a platform appends a warning label or other expression on one piece of expression, but not another, H.B. 20 would allow users to sue for the disparate treatment.

37. Thus, combining the requirements of the two key operative definitions, H.B. 20 prohibits the exercise of editorial and curatorial discretion in implementing content moderation policies on the websites and applications H.B. 20 covers.

38. Decisions to remove a particular item of content uploaded by a user, to deprioritize a piece of content, or to temporarily or permanently remove a user's ability to upload content to the service, serve different purposes within our members' businesses. These decisions often need

⁵⁷ Heather Greenfield, *Texas Legislators Approve Bill Making It Easier To Sue Companies For Policies Protecting Users Online*, CCIA (Aug. 30, 2021), <https://www.ccia.net.org/2021/08/texas-legislators-approve-bill-making-it-easier-to-sue-companies-for-policies-protecting-users-online/>; Rachel Pannett, *Russia threatens to block YouTube after German channels are deleted over coronavirus misinformation*, Washington Post (Sept. 29, 2021), <https://www.washingtonpost.com/world/2021/09/29/russia-ban-youtube-german-coronavirus/>.

to strike a balance between limiting the detrimental effects of objectionable content on the services and preserving open access.

39. Having a full panoply of moderation tools available enables CCIA member companies to strike an appropriate balance in each situation. H.B. 20's requirements would remove the services' ability to use those moderation tools and would upset the delicate balance between openness and responsibility that makes many members' services usable and enjoyable by a wide variety of users.

40. H.B. 20 grants millions of Texans—and the Attorney General—the opportunity to sue over countless editorial decisions across billions of pieces of content.

41. With the risk of a lawsuit for any editorial decision—backed up by H.B. 20's grant of authority for trial courts to impose daily punishments for “contempt”—it will be very difficult to justify removing or moderating any content at all.

42. The sheer volume of content on these websites and applications will also make H.B. 20's “disclosure” and operational provisions unduly burdensome.

43. For instance, the requirement for a report detailing every piece of content over which a covered member upheld their policies would be voluminous and would ultimately deter that member from performing content moderation or otherwise exercising editorial or curatorial discretion.

44. Likewise, the notice requirement that applies whenever a Texas user is “censored” (as H.B. 20 defines that term) would likely result in the services sending millions of such notices per day. The breadth of the statutory definition of this term would apply to editorial decisions that remove clearly unacceptable material.

45. If these provisions were to go into effect, they would seriously undermine the safety and utility of the members' services. The risk of liability on the basis of various provisions H.B. 20 would require many member services to substantially cut back on their moderation efforts, with the foreseeable results of (1) leaving offensive and dangerous content accessible to the public via the services; (2) making maintenance of family-friendly, curated collections of user-uploaded content nearly impossible; and (3) making the services less useful for their intended purposes.

46. For many services, a substantial proportion of the value provided to users is the service's arrangement of relevant, useful, or entertaining information in a way that provides the sort of content and experience that the user is seeking. These ways of organizing information on a service can fall afoul of the statute's definition of "censorship" despite being wholly conventional and benign.

47. The statute's broad and vague descriptions of what practices are prohibited leave a number of questions unanswered, and the provisions that are comprehensible impose practices that would severely undermine the services' value to their users.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 29, 2021 in Washington D.C.

A handwritten signature in black ink that reads "Matthew Schruers". The signature is written in a cursive, slightly slanted style.

Matthew Schruers