

The American Innovation and Choice Online Act Manager's Amendment Still Fails The Test

NetChoice agrees with Sens. Klobuchar and Grassley that S. 2992 needs substantial work. But their proposed changes don't fix the bill and introduce new risks for American consumers.

Rather than rush the process, the Senate Judiciary Committee should insist on a deliberate, methodical approach that gives security experts, economists, and interested Americans an opportunity to discuss the bill's language and unintended consequences. Here's why:

The bill still disadvantages American businesses and consumers, while self-preferencing foreign and potentially hostile competitors.

- Prohibits or limits American businesses from protecting their users' data and security through integrated security features, spam filters, and so on.
- Prohibits or limits American businesses from excluding suspicious apps from app stores and digital marketplaces.
- Requires American businesses to share user data with foreign businesses, even those operating in hostile foreign countries with ties to hostile foreign governments.
- Subjects American businesses to onerous, innovation-killing regulations, while leaving foreign competitors free to innovate.

The bill still threatens services American love and use daily.

- Prohibits or limits American businesses from integrating features or services into one product, even when doing so benefits American consumers.
- Overrules the broadly supported, bipartisan Consumer Welfare Standard, which signals the bill's intent to usher in a new antitrust regime that positions politically-motivated government intervention.
- Encourages private businesses to raise prices, even when their products are currently free, to avoid Draconian penalties that, if levied, will crush American businesses.

The amendments give even more discretion to the FTC and state AGs to pursue anti-consumer principles.

- "Online platform" includes any website or app that "enables user searches or queries that access or display a large volume of information." That sweeps in job boards, classified listings, and article searches maintained by many privately-held businesses. That gives the FTC even more discretion to regulate the economy without congressional approval.
- Introduces even more uncertainty into the marketplace at a time when inflation is at record highs and the pandemic threatens economic growth.
- Allows any state attorney general to bring their own actions, creating a patchwork of politically-motivated prosecution.

The bill still threatens to make antitrust partisan politicking.

- Klobuchar's Manager's Amendment allows any Administration to stop social media platforms from hosting "dangerous" political groups named on a "list maintained by the U.S. Government by which entities have been identified as national security, intelligence, or law enforcement risks."
- The unlawful conduct described in this bill would include an online platform removing a user because it "discriminated in the application of its terms of service among similarly situated business users."