



Feb 1, 2023

Senate Committee on Federal and State Affairs
Attn: Sheila Wodtke, Committee Assistant
300 SW 10th Street
Topeka, Kansas 66612

Re: SB 50 - "Prohibiting internet social media terms of service that permit censorship of speech." (Oppose)

Dear Chair Senator Mike Thompson and Members of the Senate Committee on Federal and State Affairs:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 50.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.¹ Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. Recent sessions have seen an increasing volume of state legislation related to the regulation of what digital services host and how they host it. While recognizing that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy, these bills require study, as they may raise constitutional concerns,² conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or harmful content on their websites.

1. Kansas cannot and should not attempt to force private online businesses to publish dangerous or otherwise objectionable content.

In addition to prohibiting illegal content as required by relevant state and federal laws, many digital services remove content that is dangerous, though not inherently illegal. This includes, for example, content that exhorts users to self-harm or encourages young people to engage in dangerous or destructive behavior. Thus, while it is not explicitly illegal to engage in cyberbullying, or to evangelize the American Nazi Party, many digital services nevertheless act

¹ For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at <https://www.cciagnet.org/members>.

² Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 Hastings L.J. 1203 (2022), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal.



on such content to uphold commitments to their user communities to combat dangerous or abhorrent categories of content or behavior.

Thus, if digital services are compelled to treat all user-generated material with indifference, their websites could become saturated with inappropriate and potentially dangerous content and behavior.³ Consumers would be exposed to foreign disinformation, Communist propaganda, and anti-American extremism, all of which are not inherently unlawful, and would appear to constitute a “viewpoint” under SB 50.

2. Businesses operating online depend on clear regulatory certainty across jurisdictions nationwide.

Existing U.S. federal law provides legal and regulatory certainty for websites and online businesses that they will not be held liable for the conduct of third parties. By limiting the liability of digital services for misconduct by third-party users, U.S. law has created a robust Internet ecosystem where commerce, innovation, and free expression thrive — while enabling providers to take creative and aggressive steps to fight online abuse.

Survey research demonstrates that changing regulations to remove intermediary protections would have a negative effect on venture capital investment.⁴ Similarly, economic research found that VC investment in cloud computing firms increased significantly in the U.S. relative to the EU after a court decision involving intermediary liability.⁵ Creating a patchwork of state laws would undermine this legal certainty and harm competition.

3. The private right of action would result in the proliferation of frivolous lawsuits.

SB 50 permits consumers to bring legal action against companies that have been accused of violating new regulations. By creating a new private right of action, the measure would open

³ Rob Arthur, *We Analyzed More than 1 Million Comments on 4chan. Hate Speech There Has Spiked by 40% since 2015.*, VICE, (July 10, 2019),

<https://www.vice.com/en/article/d3nbzy/we-analyzed-more-than-1-million-comments-on-4chan-hate-speech-there-has-spiked-by-40-since-2015>.

⁴ Booz & Company, *The Impact of U.S. Internet Copyright Regulations on Early Stage Investment: A Quantitative Study* (2011), <https://static1.squarespace.com/static/5481bc79e4b01c4bf3ceed80/t/54877560e4b0716e0e088c54/1418163552585/Impact-US-Internet-Copyright-Regulations-Early-Stage-Investment.pdf>

⁵ Compare Josh Lerner, *The Impact of Copyright Policy Changes on Venture Capital Investment in Cloud Computing Companies* (Analysis Group 2011), <https://www.analysisgroup.com/globalassets/content/insights/publishing/impact-copyright-policy-changes-venture-capital-investment-cloud-computing-companies.pdf>; with Josh Lerner, *The Impact of Copyright Policy Changes in France and Germany on Venture Capital Investment in Cloud Computing Companies* (Analysis Group 2012), <https://www.cciagnet.org/wp-content/uploads/library/eu%20cloud%20computing%20white%20paper.pdf>.



the doors of Kansas’s courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individual consumers and advertisers in Kansas, disproportionately impacting smaller businesses and startups across the state.⁶

* * * * *

We appreciate your consideration of these comments and stand ready to provide additional information as the legislature considers proposals related to technology policy.

Sincerely,

Jordan Rodell
State Policy Manager
Computer & Communications Industry Association

⁶ Trevor Wagener, *State Regulation of Content Moderation Would Create Enormous Legal Costs for Platforms*, Broadband Breakfast (Mar. 23, 2021), <https://broadbandbreakfast.com/2021/03/trevor-wagener-state-regulation-of-content-moderation-would-create-enormous-legal-costs-for-platforms/>.