



March 9, 2023

House Cybersecurity, Data Analytics, & IT Committee
401 S. 2nd St
Springfield, IL 62701

Re: HB 3943 - "SOCIAL MEDIA MODERATION" (Oppose)

Dear Chair Robinson and Members of the House Cybersecurity, Data Analytics, & IT Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 3943.

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 platforms.

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

Existing U.S. law provides websites and online businesses with legal and regulatory certainty that they will not be held liable for third-party content and conduct. 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 — all while enabling providers to take creative and aggressive steps to fight online abuse. Ambiguous and inconsistent regulation at the state level would undermine this business certainty and deter new entrants, harming competition and consumers.

2. Overly prescriptive regulation of terms of service could harm vulnerable users.

Responsible digital services providers already take aggressive steps to moderate dangerous and illegal content, consistent with their terms of service. The companies deliver on the commitments made to their user communities with a mix of automated tools and human review. In 2021, a number of online businesses announced that they had been voluntarily participating in the Digital Trust & Safety Partnership (DTSP) to develop and implement best practices to ensure a safer and more trustworthy internet, and have recently reported on the efforts to implement these commitments.³

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.ccianet.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.

³ Margaret Harding McGill, *Tech giants list principles for handling harmful content*, *Axios* (Feb. 18, 2021), <https://www.axios.com/techgiants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

As digital services invest significant resources in developing and carrying out trust and safety operations to protect users from harmful or dangerous content, they require flexibility in order to address new challenges as they emerge. As currently outlined in the bill, covered entities would be required to disclose internal content moderation practices. Without a further definitions of terms such as “automated content moderation systems,” the provisions may be both overly prescriptive and counterproductive to the legislation’s intended goals — rather than protecting consumers from harmful content, they might have the adverse unintended consequence of giving nefarious foreign agents, purveyors of harmful content, and other bad actors a playbook for circumventing digital services’ policies.

3. The reporting requirement is redundant and could disproportionately impact smaller companies.

HB 3943 would require companies to compile and submit a semiannual transparency report to the Illinois Attorney General. Many online platforms already voluntarily and regularly generate such reports and make them publicly available on their websites. Doing so is in fact an evolving industry practice: since its launch, DTSP has quickly developed and executed initial assessments of how its member companies are implementing the DTSP Best Practices Framework, which provides a roadmap to meaningfully increase trust and safety online. This roadmap includes several commitments to transparency and content moderation disclosures, in addition to others, to which DTSP members are expected to adhere.⁴

However, the development of such reports is extremely labor-intensive, and requiring detailed documentation with this frequency could disproportionately burden smaller companies with limited resources. CCIA recommends that the reporting requirement be limited to annually instead of semiannually to offset the time and labor necessary to produce such detailed reports.

4. Further, the proposed penalties for violations are overly burdensome and may, again, disproportionately impact smaller companies.

HB 3943 specifies that applicable social media companies in violation of the bill’s provisions may be subject to a civil penalty not to exceed \$15,000 per violation per day. In addition, CCIA notes that HB 3943 does not provide a cure period. We encourage legislators to include at least a 30-day cure period, as this allows digital services the opportunity to correct and address any compliance issues before accumulating penalties. Smaller companies, in particular, who may already struggle to meet the labor-intensive transparency reporting requirement may subsequently be additionally strained by the financial burden imposed. Because these statutory penalties are unmoored from any actual injury to users, they are inherently arbitrary. Penalties for non-compliance should instead have some relationship to the injury to users.

5. This bill contains problematic enforcement mechanisms, including the private right of action which would result in the proliferation of frivolous lawsuits.

HB 3943 permits users 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 the doors of Illinois's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove

⁴ See, e.g., Digital Trust & Safety P’ship, *The Safe Assessments: An Inaugural Evaluation of Trust & Safety Best Practices* (2022), https://dtspartnership.org/wp-content/uploads/2022/07/DTSP_Report_Safe_Assessments.pdf, at 37 (Appendix III: Links to Publicly Available Company Resources).



extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individual users and advertisers in Illinois, disproportionately impacting smaller businesses and startups across the state.⁵

Separately, this bill establishes enforcement authority with the state attorney general, and it also authorizes a city attorney to bring actions for relief – including financial penalties – in certain instances. If the action is brought by a city attorney, the collected penalty would be split equally among the treasurer of the city and the treasurer of the county in which the judgment was entered. This provision creates a punitive financial incentive for city officials to seek out formalistic violations in order to supplement local resources, while not necessarily supporting efforts to increase transparency.

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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

⁵ 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>.