



February 2, 2024

House Ways and Means Committee  
Attn: Stanford D. Ward, George Butler, Alistair Johnston (Department of Legislative Services)  
Room 131  
House Office Building  
Annapolis, MD 21401

## RE: HB 333 “Election Law - Election Disinformation on Large Social Media Platforms and Influence Related to Voting” (Unfavorable)

Chair Atterbeary and Members of the House Ways and Means Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 333 in its introduced and proposed amended form. We understand that Delegate Rosenberg is considering amendments to the bill’s current language and look forward to working together on this proposal.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.<sup>1</sup> 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.

CCIA understands lawmakers’ concerns about potential impacts of election disinformation online. 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.<sup>2</sup>

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. 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,<sup>3</sup> conflict with federal law, and risk impeding digital services companies in their efforts to restrict inappropriate or harmful content on their platforms.

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<sup>1</sup> 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3985&context=hastings_law_journal).

We appreciate the opportunity to describe CCIA’s concerns with HB 333, as further detailed in the comments below.

## Several provisions warrant additional clarification.

Under HB 333, a social media platform would be required to report the name of the account “responsible for” the communication of a post including election disinformation. CCIA requests clarification as to whether “responsible for” refers to the first instance in which the communication appeared on the platform. Given the interconnected nature of social media platforms, and the ability to share and repost content, it is important to understand this distinction. It would also be helpful to understand whether communications including election disinformation includes content where the user posting is unaware that the information they are posting would qualify as “disinformation.”

CCIA also requests more clarity regarding HB 333’s liability provisions. As written, the bill provides for the “joint and several liability of the person who operates the large social media platform and any person exercising direction or control over the activities of the person who operates the large social media company.” The corporate structure exists to protect shareholders from liability incurred by the corporation. The corporate veil is a foundation of American law and the American economy, without which there would be radically reduced levels of investment. Further, research has shown that the threat of personal liability of founders and corporate officers may be invoked by plaintiffs to intimidate defendants into capitulation.<sup>4</sup> Threatening the home of a corporate officer, or the college education fund of an investor’s children, with a civil claim regarding misconduct by that company’s customers does not foster a healthy investment environment.<sup>5</sup> A corporate officer or shareholder should incur liability for the infringing activities of the corporation only if the individual themselves engaged in the infringing activity or if that person otherwise would be liable under traditional secondary liability principles. As such, CCIA would recommend that any liability remain with the business entity.

## Compliance obligations should not be designed around revenue thresholds or other carve-outs.

As drafted, HB 333’s thresholds for what constitutes a “large social media platform” could prevent lawmakers from achieving the intended goal of limiting election disinformation online. For example, the revenue and user-based limitations specified in the bill are likely to not encompass other services on which election mis- and disinformation may appear, such as Truth Social or Parler, which is rumored to relaunch this year. CCIA urges legislators to reconsider a statutory definition gerrymandered around particular businesses with revenue thresholds and instead craft compliance obligations that are manageable by all entities operating in the relevant sector.

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<sup>4</sup> Michael Carrier, *Copyright and Innovation: The Untold Story*, 2012 Wis. L. Rev. 891, 944 (2012), <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2012/11/2-Carrier.pdf>; Matthew Le Merle et al., *The Impact of U.S. Internet Copyright Regulations on Early-Stage Investment: A Quantitative Study* (Booz & Company 2011), <https://static1.squarespace.com/static/5481bc79e4b01c4bf3ceed80/t/54877560e4b0716e0e088c54/1418163552585/Impact-US-Internet-Copyright-Regulations-Early-Stage-Investment.pdf>.  
<sup>5</sup> Carrier, id., at 943-44.



## The level of detail and frequency of reporting requirements raises concerns.

HB 333 would require large social media platforms to compile and submit within two business days of becoming aware of an account or a post that communicates election disinformation a report to the State Board that includes granular information about the communication flagged with election disinformation including the account, dates and times the communication was first and last disseminated, an approximate description of the geographic location to which the communication was disseminated, total number of impressions, and an “approximate description of the audience that received or was targeted to receive the communication.”

CCIA understands the importance of reporting information relevant to election disinformation. However, the development of such reports as outlined in HB 333 is extremely labor-intensive, and requires detailed documentation with this frequency. It is also worth noting that the state board must only act upon these reports “as soon as practicable” which raises questions as to whether near-real-time reports would be acted upon in a timely manner. CCIA recommends that the reporting requirement be limited to a timeframe that is consistent and aligned with the state board’s ability and requirement to respond to reports from the social media platform instead of within two business days to offset the time and labor necessary to produce such detailed reports. CCIA suggests collaborating with pertinent stakeholders to confirm that the covered platforms are currently gathering the required information – otherwise, appropriate mechanisms to track, collect, and report such data would need to be put in place.

Additionally, the level of detail required for the reports could present significant privacy concerns. Large social media platforms would be required to disclose information related to the audience of communication as it potentially reveals the identities of users targeted or affected by the election disinformation to the state government entity.

## 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.

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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.

Respectfully submitted,

Khara Boender  
State Policy Director  
Computer & Communications Industry Association