



February 12, 2024

Senate Committee on Transportation, Technology and Missing Children
1700 W Washington St
Phoenix, AZ 85007

RE: SB 1124 - "social media platforms; standards; notification" (Oppose)

Dear Chair Farnsworth and Members of the Senate Committee on Transportation, Technology and Missing Children:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 1124.

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.

On line 15, page 3, the section's title is "Candidates; deplatforming prohibited; civil penalty." However, on line 16, page 3, the section reads "A social media platform *may* deplatform a candidate who is known by the social media platform to be a candidate..." CCIA suspects, given the Senate engrossed version of SB 1106 passed in 2023, that the sponsor meant to include that language which reads, "A social media platform *may not* wilfully deplatform a candidate who is known by the social media platform to be a candidate..." CCIA's testimony will reflect the concerns we have with the proposal from the language of the Senate engrossed version of SB 1106 passed in 2023.

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

Just as online services do not serve all users, they do not publish all content.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 Chinese Communist Party, many digital services nevertheless act on such content to uphold commitments to their user communities to combat dangerous or abhorrent categories of content or behavior.

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.



Thus, if social media services are compelled to treat all user-generated material, including that of a candidate, with indifference, their platforms 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 “content or material posted by a user” under SB 1124.

2. New regulations would impose duplicative responsibilities on businesses with no tangible benefit to consumers.

SB 1124 would require companies to compile and publish to users transparency “standards” and “notifications” containing information about content monitoring and removal practices. Many online platforms already voluntarily invest in generating such “notifications” regularly and make them publicly available on their websites.⁴ There is no need to generate additional bureaucracy to effectuate what the marketplace is already accomplishing.

Digital services invest significant resources into developing and carrying out content moderation practices that protect users from harmful or offensive material and need flexibility in order to address new challenges as they emerge. Instead, the proposed requirements in SB 1124 would mandate that services disclose sensitive information, including content moderation practices, algorithms, and techniques that could be exploited by bad actors. Arizona should not offer a roadmap to criminals and adversaries on how to defeat the measures the digital services employ to protect consumers from online threats.

3. 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.⁵ 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.⁶ Creating a patchwork of state laws would undermine this legal certainty and harm competition.

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 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).

⁵ 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>

⁶ 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.ccianet.org/wp-content/uploads/library/eu%20cloud%20computing%20white%20paper.pdf>.



4. Related proposals with similar requirements for online businesses are currently being litigated in two different jurisdictions.

As U.S. federal law limits the liability of both digital service providers and their users with regard to content created by third parties, this is a subject of ongoing federal attention. Recently, the U.S. Supreme Court declined to recommend any changes to a key tenet of U.S. internet law in *Gonzalez v. Google*,⁷ in which the Court was considering issues related to content moderation and organization methods. Additionally, *NetChoice & CCIA v. Moody*⁸ and *NetChoice & CCIA v. Paxton*⁹ are both cases this term in which the Supreme Court will examine how digital service providers may display third-party content. CCIA recommends taking on board the results of relevant legal proceedings so legislators can act with fuller knowledge of the constitutional boundaries. Otherwise, any potential statute may be at greater risk of protracted, expensive litigation.

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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

⁷ Trevor Wagener, *A Ruling Against Google in Gonzalez Could Create a “World of Lawsuits” and “Economic Dislocation,”* Disruptive Competition Project (Feb. 27, 2023), <https://www.project-disco.org/competition/gonzalez-v-google-could-create-a-world-of-lawsuits-and-economic-dislocation/>.

⁸ *NetChoice & CCIA v. Moody*, <https://ccianet.org/litigation/netchoice-ccia-v-moody/>.

⁹ *NetChoice & CCIA v. Paxton*, <https://ccianet.org/litigation/netchoice-ccia-v-paxton/>.