



February 28, 2023

Senate Subcommittee on Technology
1007 East Grand Avenue
Des Moines, Iowa 50319

Re: SSB 1189 – "A bill for an act relating to censorship of expression on online platforms, and providing penalties." (Oppose)

Dear Chair Cournoyer and Members of the Senate Technology Subcommittee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SSB 1189.

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 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 recognizes that policymakers are appropriately interested in the digital services that make a growing contribution to the U.S. economy. Bills focused on the content of Internet speech, however, require study, because 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. Iowa cannot and should not attempt to force private online businesses to publish dangerous or otherwise objectionable content.

SSB 1189 would require private online businesses to display all content, which would have serious deleterious effects on the user experience. Many digital services remove content that is dangerous, upsetting, and injurious, even though not inherently illegal. This content includes, for example, messages and images that exhort users to self-harm or encourage 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 on such content in order

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.



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

Thus, if social media services are compelled to treat all user-generated material with indifference, their platforms would become saturated with inappropriate and potentially dangerous content and behavior.³ Users would be exposed to foreign disinformation, communist propaganda, and anti-American extremism, all of which are not inherently unlawful, and would not be allowed to be taken down under the bill's definition of "deplatform."

2. Social media companies are not common carriers and should not be required to pay "platform fees" in order to create a user-friendly experience consistent with their brand.

To date, courts have indicated that social media companies are not common carriers⁴, and therefore, not universal services. The Legislature cannot circumvent the First Amendment by foisting upon an unwilling company a legal status it does not have.⁵

In addition, the requirement that social media companies pay "platform fees" in order to create a user-friendly experience consistent with their brand amounts to a bizarre example of compelled speech contrary to the First Amendment. It would force digital services to pay the government to avoid being compelled to host and promote third parties' content and speech that would otherwise risk negative brand associations, diminished user experience, and reduced online safety for users. In effect, digital services would be penalized for attempting to keep users safe, and would provide a financial incentive to services that seek to promote other undesirable and harmful material such as Chinese Communist Party propaganda.

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

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 *NetChoice LLC & CCIA v. Paxton*, 573 F. Supp. 3d 1092, 1107 n.3 (W.D. Tex. 2021).

⁵ See *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1932 (2019) ("certain private entities have rights to exercise editorial control over speech and speakers on their properties or platforms"). In any event, common carriers still retain First Amendment interests. See *PG&E v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 12, 20-21 (1986).



commerce, innovation, and free expression thrive — while enabling providers to take creative and aggressive steps to fight online abuse.

4. Further, research suggests that removing such regulatory certainty could have significant economic impacts.

The Bureau of Economic Analysis of the U.S. Commerce Department estimated that the digital economy built on this regulatory certainty “accounted for \$3.70 trillion of gross output, \$2.41 trillion of value added (translating to 10.3 percent of U.S. gross domestic product (GDP)), \$1.24 trillion of compensation, and 8.0 million jobs.”⁶ Introducing a state patchwork of differing and potentially conflicting regulatory requirements would result in legal uncertainty, create unprecedented economic distortions, and jeopardize the tools used by the vast majority of Americans to speak and express themselves online.

Survey research also demonstrates that changing regulations to remove intermediary protections would have a negative effect on venture capital investment.⁷ Similarly, economic research found that such investment in cloud computing firms increased significantly in the U.S. relative to the European Union after a court decision involving intermediary liability.⁸

Investors in digital intermediaries and their business users could see significant losses, and such losses would be felt widely across the American population. Digital intermediaries account for at least one fifth, and potentially more than a quarter, of the S&P 500 by index weighting.⁹ Thus a major reduction in the value of their securities would significantly harm passive investors’ low-cost index funds that track the S&P 500 Index, commonly a top investment in 401(k) plans and personal investments for ordinary Americans. According to Morningstar, retail investors held \$8.53 trillion in index funds that seek to replicate market indicators like the S&P 500 Index or related measures with similarly large digital intermediary representation.¹⁰ Likewise, American pension plans are heavily

⁶ Tina Highfill & Christopher Surfield, *New and Revised Statistics of the U.S. Digital Economy, 2005–2021*, Bureau of Economic Analysis of the U.S. Department of Commerce, <https://www.bea.gov/system/files/2022-11/new-and-revised-statistics-of-the-us-digital-economy-2005-2021.pdf>.

⁷ 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>

⁸ 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.cciainet.org/wp-content/uploads/library/eu%20cloud%20computing%20white%20paper.pdf>.

⁹ Nathan Reiff, *The Top 25 Stocks in the S&P 500*, Investopedia (Oct. 11, 2022), <https://www.investopedia.com/ask/answers/08/find-stocks-in-sp500.asp>.

¹⁰ Allan Sloan, ‘The democratization of investing’: Index funds officially overtake active managers, Yahoo! Finance (May 22, 2022), <https://finance.yahoo.com/news/index-fund-assets-exceed-active-fund-assets-120639243.html>.



invested in digital intermediaries: the average government employee pension plan has 4.3 of the 5 leading digital intermediaries in its top 10 holdings.¹¹

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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,

Khara Boender
State Policy Director
Computer & Communications Industry Association

¹¹ Trevor Wagener, The Cost of Tech Regulatory Bills to State and Local Pension Plans – State By State Aggregates, CCIA Research Center (May 20, 2022), <https://research.ccianet.org/stats/cost-of-tech-regulation-bills-state-map/>.