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December 11, 2015

The Honorable Dianne Feinstein
Vice Chairman
Select Committee on Intelligence
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate
217 Russell Senate Office Building
Washington, D.C. 20510

RE: S. 2372, The Requiring Reporting of Online Terrorist Activity Act

Dear Senator Feinstein and Chairman Burr:

The undersigned associations are respectfully opposed to the *Requiring Reporting of Online Terrorist Activity Act* (S. 2372).

We understand and are deeply sympathetic to combating terrorism. Our member companies work every day to ensure those who use our platforms are doing so legally, and respond to legal requests from law enforcement to cooperate with investigations.

However, this previously rejected framework would impose a new government mandate requiring a broad spectrum of companies to report users' activities and communications to the U.S. Government, ultimately not achieving national security gains.

Unfortunately, the *Requiring Reporting of Online Terrorist Activity Act* risks chilling free speech, including counter-terrorism speech, and also chilling innovation without benefiting our national security. It contradicts and undermines twenty years of federal Internet policy that remains the legal foundation of the Internet's transformative role in promoting democratic values and free speech worldwide.

S. 2372 would make it difficult to identify terrorist activity online by requiring Internet platforms to report content that in many cases they have no way to understand. The term that triggers the reporting mandate, "terrorist activity," is neither a legal term of art nor could it be adequately defined through legislation. What is more, content potentially within the definition is written in a huge range of languages that the service providers subject to the law are unlikely to understand.

Companies will err on the side of over-reporting because they will be liable if they fail to report content, which is exacerbated by the requirement to report facts and circumstances connected to a vague concept of “terrorist activity.” This would also potentially raise First Amendment and privacy concerns for the user who posted the item.

Moreover, this over-reporting may also chill valuable counter speech, because it could discourage users from posting speech that challenges or undermines terrorism out of fear of being reported to the government due to association with terrorist content.

S. 2372 creates a disincentive for companies to innovate in response to new threats online. Some U.S. companies might not develop new tools and practices that could benefit users and law enforcement due to concerns about it inadvertently increasing liability.

In addition, the scope of Internet platforms that would be covered by the proposal is enormous. It would create a huge universe of entities subject to the mandate, including but not limited to, social media companies, search engines, Internet service providers, blogs, community bulletin boards, and universities. And, the proposal would not limit the reporting requirement to publicly viewable sites. It would require a cloud storage or email provider to police a third party’s internal, stored communications to avoid liability under the provision.

Finally, if adopted, the provision would risk serving as a global template for other countries to impose reporting requirements for activities those jurisdictions deem unlawful. This would be particularly problematic with countries that regulate speech, including political speech, and with authoritarian regimes that would demand that Internet companies police their citizens’ activities.

During debate on the Intelligence Authorization Bill for Fiscal Year 2016 earlier this year, Section 603, which contained the same language as S. 2372, was removed from the final text due to strong and broad opposition based on the concerns outlined above.

For these reasons, we oppose the *Requiring Reporting of Online Terrorist Activity Act* and encourage the Senate to explore alternative ways of combating those who incite terrorism and violence through the Internet.

Respectfully,

Internet Association
Application Developers Alliance
Computer & Communications Industry Association
Consumer Technology Association
Engine
Internet Infrastructure Coalition
NetChoice
Reform Government Surveillance
Software & Information Industry Association

CC: The Honorable Mitch McConnell, Majority Leader; The Honorable Harry Reid, Minority Leader