



Computer & Communications
Industry Association
Tech Advocacy Since 1972

February 23, 2022

The Honorable Butch Miller
President Pro Tempore
Georgia State House
206 Washington Street SW
Atlanta, GA 30334

Re: CCIA Comments on GA SB 393 - Oppose

Dear Senate Leader Miller and Members of the Senate:

On behalf of the Computer & Communications Industry Association (CCIA), I write to express concerns with SB 393. CCIA is a not-for-profit trade association representing small, medium, and large communications and technology firms. For 50 years, CCIA has promoted open markets, open systems, and open networks.¹ CCIA advocates for balanced intermediary protections, which are critical for services that users rely upon to share information online.

SB 393 inaccurately categorizes covered entities as common carriers, violates the First Amendment, and would harm small businesses in the State. As such, we urge Members not to advance the bill.

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

SB 393 inaccurately asserts that social media platforms are “common carriers” by virtue of market dominance, which implies they are prohibited from restricting problematic but legal content. However, these companies operate very differently from traditional common carriers, such as public transit or telephone cable providers. Their services are not common, as they do not serve the entire public, and they do not carry all content equally. Most services explicitly refuse service to individuals and organizations specially designated by governments or intergovernmental organizations as criminals or terrorists. Others refuse service to minors; those who have violated their terms of use, for the safety of other users; and jurisdictions where meeting local regulatory requirements are not practicable.

Just as these services do not serve all users, they do not carry 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 American Nazi Party, many digital services nevertheless take action on such

¹ For more information about CCIA please see: <https://www.ccianet.org/about>.

content to deliver on commitments made to their user communities from various dangerous or abhorrent categories of content or behavior.

Thus, were social media services compelled to treat all user-generated content with indifference, their platforms would be saturated with inappropriate and potentially dangerous content and behavior. Georgians would be exposed to foreign disinformation, Communist propaganda, and anti-American extremism, all of which is not inherently unlawful, and would appear to constitute a “viewpoint” under SB 393.

Setting aside the matter of whether the Legislature *should* foist upon private companies the obligation to convey the viewpoints of foreign propagandists and anti-American extremists, courts have been clear that social media companies are not common carriers.² The Legislature cannot circumvent the First Amendment by foisting upon an unwilling company a legal status it does not have.³

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

SB 393 would require companies to compile, publish, and submit to the Georgia Public Service Commission biannual transparency reports containing information about content monitoring and removal practices. Many online platforms already voluntarily invest in generating such reports 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 content, and need flexibility in order to address new challenges as they emerge. Instead, the proposed requirements in SB 393 would mandate that services disclose sensitive information, including content moderation practices, algorithms, and techniques as well as training materials that could be exploited by bad actors. Georgia should not offer a roadmap to criminals and adversaries on how to defeat the measures the digital services employ to protect Georgians from online threats.

In addition, the bill’s provisions related to terms of service are overly prescriptive and rather than protecting consumers from specific categories of content, may actually lead to the proliferation of racism, extremism, disinformation, harassment, and foreign interference.

3. Businesses operating online depend on clear regulatory certainty under federal law.

² See *NetChoice LLC & CCIA v. Paxton*, 2021 WL 5755120 (W.D. Tex. Dec. 1, 2021), at n.3.

³ 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. Public Utils. Comm’n of Cal.*, 475 U.S. 1, 12, 20-21 (1986). That SB 393 attempts to disclaim Constitutional conflicts in 46-6A-6(b) does not resolve this. The bill’s self-contradictory language would only render it a dead letter.

⁴ See, e.g., <https://transparencyreport.google.com/>; <https://transparency.fb.com/data/>; <https://transparency.twitter.com/>; <https://policy.pinterest.com/en/transparency-report>; <https://www.reddit.com/wiki/transparency>; <https://discord.com/tags/transparency-reports>.

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.

4. The private right of action would result in the proliferation of frivolous lawsuits.

SB 393 permits users to bring a legal action against companies that have been accused of violating new regulations. By creating a new private right of action, the bill would open the doors of Georgia's courthouses to plaintiffs advancing frivolous claims with little evidence of actual injury. As lawsuits prove extremely costly and time-intensive, it is foreseeable that these costs would be passed on to individual users and advertisers in Georgia, disproportionately impacting smaller businesses and startups across the state.⁷

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We appreciate your consideration of these comments. We stand ready to provide additional information as the Senate considers legislation related to technology policy.

Sincerely,

Alyssa Doom
State Policy Director
Computer & Communications Industry Association

⁵ Booz & Company, *The Impact of U.S. Internet Copyright Regulations on EarlyStage 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>.

⁷ 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/>.