

The Honorable Lindsey Graham
Chairman, Committee on the Judiciary
United States Senate

The Honorable Dianne Feinstein
Ranking Member, Committee on the Judiciary
United States Senate

September 29, 2020

Re: S. 4632, The Online Content Policy Modernization Act

Dear Chairman Graham and Ranking Member Feinstein,

The undersigned are 15 civil society organizations, trade associations, nonprofit think tanks and individuals that seek to promote free expression and innovation online. We write in opposition to the Online Content Policy Modernization Act, which was introduced just days before a scheduled markup this week. The bill would undermine First Amendment rights, chill open public discourse that underpins U.S. democracy, stall innovation, expose children to dangerous content and set this country behind its global competitors. We ask you and the members of the Committee not to move forward with it until it has received sufficient consideration and addresses the concerns we discuss below.

Title II of the bill amends Section 230 of the Communications Act, a decades-old law that protects innovative companies and online speakers who have put the United States at the forefront of the technological world. The bill revokes this protection where an online service provider restricts access to content except where the provider has an “objectively reasonable belief” that the content falls into a narrow list of categories. It further revokes the protection where the service provider “editorializes or affirmatively and substantively modifies” its users’ content.

The bill thus exposes online services to massive liability risk for moderating content outside of a narrow set of categories—effectively ensuring that services will not be able to moderate objectionable content. We are concerned that this amendment will have at least the following severely negative consequences:

- **Chilling online users’ free expression.** Online communities depend on service providers’ effective content moderation abilities to ensure that their viewpoints are not drowned out by well-resourced opponents, advertisers and others. The bill would end this important protection.
- **Violating the First Amendment.** Online services have constitutional rights to express viewpoints and to use content moderation to effectuate those viewpoints. The bill denies this right by compelling even the smallest websites to carry speech, potentially creating legal liability for “editorializing.”
- **Exposing children and vulnerable groups to online dangers.** Content

moderators expend immense resources dealing with a rapidly changing environment of scams, frauds, enticements and other dangerous material. By fixing in statute the categories of content that may be moderated, the bill fails to future-proof against new online harms that may arise.

- **Inhibiting American innovation and global competitiveness.** Uncertainty about what content moderation is “objectively reasonable,” what actions are “editorializing,” and what content falls into the closed list of moderatable categories will deter innovative American firms from pursuing new information technologies that can protect children, increase productivity and promote online expression. Such an impediment could not come at a worse time, when the United States is losing ground to competitor nations such as China. Ill-planned regulation of online speech could put the world’s technological future in the hands of authoritarian regimes.

We certainly acknowledge that online content moderation raises important and difficult concerns. But the proposed changes to Section 230 are too broad-sweeping and rife with unintended consequences to warrant passage. We oppose the bill as written, and hope to work with you in the future to find approaches that protect public welfare, domestic innovation and American values.

Sincerely,

R Street Institute

Woodhull Freedom Foundation

NetChoice

Eric Goldman, Santa Clara University School of Law¹

Copia Institute

Public Knowledge

Access Now

New America's Open Technology Institute

Computer and Communications Industry Association (CCIA)

ALEC Action

Engine

Center for Democracy & Technology

Internet Association

Organization for Transformative Works

Wikimedia Foundation

¹ Affiliations of individual signatories are for identification purposes only.