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Evaluating 2 Tech Antitrust Bills To Restore Competition Online

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Introduction and summary

The past 25 years have brought momentous growth in online services. Should the United States wish to continue such dynamism online for the next quarter century, attention from Congress is required. Decades have passed without major legislation for internet companies. In that time, a handful of companies have come to control access to major areas of online commerce and economic activity.¹ Significant evidence has amassed showing the largest companies are abusing their positions to punish rivals, thwart would-be competitors, entrench existing holdings, and leverage their power to win in new markets.² The Center for American Progress has previously raised these kinds of digital platform behaviors as cause for concern and called for new privacy, regulatory, consumer protection, and anti-trust policies.³ Given the centrality of these digital platforms to economic prosperity and Americans' everyday lives, anti-competitive behaviors in online commerce represent a wide-ranging threat that should be addressed.⁴

This report assesses two bipartisan proposals to tackle digital gatekeepers' conduct of most concern: Sens. Amy Klobuchar (D-MN) and Chuck Grassley's (R-IA) American Innovation and Choice Online Act (S. 2992, henceforth American Innovation) and Sens. Richard Blumenthal (D-CT) and Marsha Blackburn's (R-TN) Open App Markets Act (S. 2710, henceforth Open App Markets).⁵ These bills propose rules that would prohibit critical digital platforms from arbitrary discrimination against competitors; restrain economically harmful promotion of platforms' own products over those of competitors (self-preferencing); and ensure consumers have access to competitive, functional app ecosystems.

As these two bills are likely to come to the Senate floor in summer 2022, this report details the latest version of each bill followed by a discussion assessing the potential benefits and limitations of the current proposals.⁶ Future updates may address those bills likely to be acted upon by the House of Representatives in the 117th Congress. Weighing the net outcomes, this report concludes these bills are substantive, worthwhile steps in delivering benefits for consumers and curbing serious economic abuse from the largest players. CAP has previously expressed

its support for the proposals, and recent changes to address concerns have only made the bills stronger.⁷ Sustainably addressing the range of issues posed by online services over time will require dedicated legislation on issues such as privacy and increased tech regulatory capacity, but these proposals are important steps to combat some of the most pressing areas of economic abuse.⁸ By purposefully targeting the anti-competitive practices of most concern, the bills offer the United States a means to materially improve consumer choice in the near term and create a more dynamic online economy in the long term. The Center for American Progress endorses the American Innovation and Choice Online Act and the Open App Markets Act. CAP urges Congress to take meaningful action to enhance consumer choice and competition online by passing these bipartisan bills into law this summer.

Background: The current legislative landscape

American Innovation and Open App Markets are the result of dedicated investigations and consultation with a wide range of stakeholders over the past several years. At the beginning of 2022, the Senate Judiciary Committee passed out both bills with strong bipartisan votes.⁹ Reports indicate that Sen. Majority Leader Chuck Schumer (D-NY) has committed to bringing the bills to the floor in summer 2022.¹⁰ A bipartisan Senate floor vote in favor of these bills would almost certainly place their House companion bills, one of which has already cleared the House Judiciary Committee, on the House floor this year.¹¹ The Biden administration has signaled its support for the bills,¹² with a strong letter of endorsement from the Department of Justice,¹³ a White House convening of American business owners who support the provisions,¹⁴ and a statement of support from Commerce Secretary Gina Raimondo.¹⁵ Along with the opportunity presented by the conference committee on the USICA/COMPETES bipartisan innovation bills,¹⁶ American Innovation and Open App Markets represent a rare bipartisan pathway for the 117th Congress to address challenges to American competitiveness.

CAP has written previously about a significant threat to economic prosperity: America's competition problem.¹⁷ The market concentration in digital industries is a particular danger to equitable and sustainable growth both in the United States and globally. Digital gatekeepers have unprecedented ability to create, understand, and manipulate these markets—particularly given that online commerce plays out in digital environments that they build, monitor, and maintain.¹⁸ Platforms have the economic incentive, detailed data, and historic amounts of stockpiled cash to shape digital markets in their favor.¹⁹ Given the importance of digital platform commerce to the American economy—be it e-commerce, mobile applications, or other software—abuses such as anti-competitive self-preferencing can and do have wide-ranging effects on commerce and consumers. American Innovation and Open App Markets aim to limit the largest platforms' ability to manipulate these markets to their benefit. The following analysis is based on the latest version of each bill: the manager's amendment to American Innovation, released in late May, and the version of Open App Markets that passed out of the Senate Judiciary Committee in early 2022.²⁰ As with any legislation, there may be further changes as the bills make their way to the Senate floor.

The American Innovation and Choice Online Act

American Innovation (S. 2992) seeks to advance a principal issue of economic fairness online. It contends that gatekeeper digital platform companies should not be able to give themselves an advantage over other commercial competitors (including smaller businesses) trying to compete with them if it harms competition, nor should companies be able to arbitrarily discriminate among businesses that rely on their platform.²¹ Self-preferencing and discrimination in these ways undermine competition, deter investment and innovation in areas with dominant gatekeepers, deprive businesses of opportunity, and deprive consumers of real choice.²² American Innovation prohibits a number of unfair, discriminatory behaviors for covered platforms,²³ giving competitors a chance to innovate and a fair shot at providing new choices to the American people. New services from dominant platforms should compete and succeed with consumers on their commercial merits—not simply because they can leverage their gatekeeper position to close the door on competitors and extend the reach of first-party services.²⁴

American Innovation would apply to the major business lines of the largest gatekeeping internet companies. The legislation would pertain to those online platforms that act as critical trading partners, have more than 50 million monthly active U.S. users or 1 billion worldwide users, more than 100,000 active U.S. business users, and record net annual sales or market capitalization of more than \$550 billion—among other qualifications.²⁵ Products or business lines from Amazon, Apple, Google, Facebook, Microsoft, TikTok, and others will be covered.²⁶ The legislation's criteria to determine a covered online platform, well-researched following numerous Senate hearings, address those platforms that control key chokepoints of digital markets and on which self-preferencing and discriminatory behavior create the most damage to competition. The bill covers only a handful of business lines from a few companies now, but its criteria are drafted in such a way that they would apply consistently to any future online platforms that gain similar market power.

The Open App Markets Act

Open App Markets (S. 2710) aims to eliminate anti-competitive conduct by app store operators and open application markets to encourage greater user choice and competition. Under the bill, app stores with more than 50 million U.S. users²⁷ would have to allow third-party app developers to interoperate²⁸ with mobile operating systems, including in ways that compete directly with first-party applications. Open App Markets would require dominant companies to

allow for alternate payment options²⁹ and app installs³⁰ while also removing the restrictions around favorable pricing³¹ and limiting developer communications with users.³² Covered companies that run qualifying large app stores³³ consist of both players in the international mobile phone duopoly—Apple’s App Store and Google’s Play store—and other large application markets such as Microsoft’s Windows app store.³⁴ These criteria would also cover app stores that become sufficiently large in the future.

Modernizing antitrust laws benefits Americans

If enacted, the American Innovation and Choice Online Act and the Open App Markets Act will mark a major step forward in restoring competitive markets. The bills would help unlock the potential of Americans to grow successful businesses and build an economy that is more prosperous, equitable, and innovative. They would likewise remove barriers to functional consumer services and introduce competitive incentives for improved quality, innovation, and competitive prices for American consumers.

The bills can lower costs and increase choice for the American people

The bills can immediately remove barriers that cause significant inconveniences between popular services on covered platforms,³⁵ which millions of Americans use daily to shop, socialize, and surf. New rules will take away confusion in some cases and lower costs in others. Over time, these bills will reduce costs and increase choices for consumers. For example, they would give American consumers access to the benefits that many Apple and Google smartphone users outside the United States already enjoy through specially negotiated requirements from other global antitrust regulators.³⁶

- **People will enjoy cost savings on mobile digital services:** The Apple/Google mobile smartphone duopoly imposes high costs for mobile applications to sell via mobile app stores. These fees, in turn, are passed on in the form of higher costs to consumers.³⁷ Reintroducing competition in app stores,³⁸ removing competitive pricing restrictions,³⁹ and giving developers more selling options⁴⁰ will generate more competitive markets for digital applications—ultimately producing lower costs for the services Americans use daily.
- **People would likely enjoy e-commerce cost savings:** Amazon’s market power in e-commerce has given it the power to charge high costs for sellers, which are passed on to consumers. A recent analysis from the Institute for Local Self-Reliance found that, “Using a variety of fees, Amazon now pockets a 34 percent

cut of the revenue earned by independent sellers on its site ... That's up from 30 percent in 2018, and 19 percent in 2014."⁴¹ These costs are passed onto consumers in the form of higher prices for goods bought on Amazon. In the near term, the bills prohibit rules that would force sellers to use extra services in order to compete effectively on the platform.⁴² In the long term, the bills will introduce greater competition online. Both may reduce high platform fees that get passed on to American consumers.

■ **People will have more options to purchase digital goods from their phones:**

Americans interested in subscribing to popular online services using their mobile phones often do not have that option. App providers restrict sign-ups on mobile because they find the required fees too high to justify (sometimes referred to as an app store “tax”⁴³). For example, today, the option to subscribe to Spotify is not enabled within Spotify mobile applications because of the high cost of digital purchases on the Apple and Android mobile operating systems. American Innovation and Open App Markets would allow for alternative payment options that remove these inconvenient barriers.⁴⁴

■ **People will have more choices when it comes to convenience, privacy,**

and safety: Americans will have greater choice and control over the digital environments they use every day. People who use mobile phones would be able to select their preferred default mapping application instead of encountering unexpected user experience obstacles such as being forced to manually copy and paste addresses between apps.⁴⁵ People who value their privacy would be able to remove insecure mobile applications and choose more privacy-sensitive services.⁴⁶ Greater choice can enable Americans with different safety needs and interests to customize their digital environments more appropriately, while maintaining everyone's ability to continue using the services they currently enjoy.

■ **Developers can be honest with people about functionality restrictions:**

Popular consumer applications would be able to explain restrictions on their smartphone apps—behaving more consistently with consumer expectations. For example, there are millions of Amazon Kindle owners who can read the Kindle eBooks they've purchased on their iPhone app—yet they cannot purchase Kindle eBooks through the iPhone app because Amazon has chosen not to enable this feature due to the high price charged by app stores for digital purchases. Amazon cannot even explain in its Kindle iPhone app that the only way to purchase Kindle eBooks on the iPhone is via the Amazon.com website accessed on a mobile web browser due to communications restrictions

from Apple.⁴⁷ Open App Markets would remove restrictions on explaining alternatives to mobile app users.⁴⁸ This would immediately allow Amazon to explain in its iPhone app how to purchase Kindle eBooks on an iPhone.

■ **Online mobile gaming could finally be unlocked for billions of gaming fans across the world:** Restrictions from the app stores have prevented the world’s most popular games from being utilized by the world’s most ubiquitous computing devices. This has held back the development of more robust mobile streaming game services. Open App Markets⁴⁹ would allow Epic Games’ popular Fortnite game to return to Apple’s App Store; Fortnite pursued recent antitrust litigation against Apple on these issues, with a mixed ruling for both sides in district court that both Apple and Epic are appealing.⁵⁰ It would also help ensure that the popular metaverse Roblox could continue to remain on Apple’s App Store if Apple were to suddenly classify it a game instead of “an experience”; Roblox recently supported Apple over Fortnite in their ongoing litigation.⁵¹ Finally, it would allow competitive development of the next generation of streaming mobile games without the extensive restrictions currently imposed on development.⁵²

■ **People can enjoy the benefits of innovation and quality improvement incentivized by real competition:** By introducing greater competition with major consumer technology services and between the platforms that would be covered by American Innovation, Congress can ensure that Americans see real innovation within the consumer technology services they use every day. Experts have noted that a lack of competition discourages innovation,⁵³ and as CAP has previously written, “centralization of research and development (R&D) resources at dominant [technology] firms may additionally result in selective or reduced innovation.”⁵⁴ These bills will help open markets for new competitors who may introduce novel, cost-saving, and quality-enhancing services. Enhanced competitive pressure can spur improvements and innovations within the services people already love. More equitable competition on covered platforms and within app stores can ensure that specialty services have a fair shot at bringing their offerings to market and reaching consumers who need them. Rules that ensure fair competition online increase the ability of tech companies to continue delivering innovations to Americans—and ensure ongoing competitive incentives to do so.

The bills create new protections for U.S. small and medium-sized businesses

Today, small and medium-sized businesses have little choice but to build, sell, advertise, or operate on monopolistic online platforms; they are essential for many business operations.⁵⁵ The bills would ensure that, as controllers of the major U.S. digital platforms, companies do not abuse their positions to prevent small and medium-sized businesses from competing. Such new protections and rights mean that online businesses and services providers will have access to online infrastructure on equal terms with competitors, including businesses operated by the platforms. The bills provide an improved chance at growing a business that is not undermined by anti-competitive actions from the platforms on which they rely to reach consumers.⁵⁶ For the very largest online platforms, American Innovation and Open App Markets would change the laws to ensure that:

- **Companies can no longer design algorithms to favor their own products:** The bills end an e-commerce or search platform’s ability to juice its ranking, search, review systems, and design to favor its own products over those of competitors.⁵⁷ This will level the playing field for other businesses and ensure that consumers are getting a clearer picture of their options.
- **Companies can no longer prevent smaller businesses from communicating with customers:** The bills provide new protections to small businesses online to ensure they can access data⁵⁸ and contact consumers when they do business on major platforms.⁵⁹ It also prevents platform companies from using those data and insights to unfairly compete against them.⁶⁰
- **Companies can no longer impose “pay to play” restrictions for businesses on major platforms:** The bills prevent big companies from requiring that businesses pay to play—buy extra goods and services just to have a chance of succeeding on the platform⁶¹ or use companies’ proprietary payment processor systems.⁶²

Such new protections mean that online businesses and service providers can have an improved chance at growing their business because the platforms will operate on a level playing field, no longer creating arbitrary obstacles to disadvantage them or extract rents from them.

Even Big Tech will experience benefits from these protections

Industry lobbyists have driven much of the public conversation about restrictions on Big Tech. Yet the ways in which even these companies will enjoy benefits under these bills have been overlooked. Large online platforms must also navigate their services through the anti-competitive restrictions of other gatekeeper online platforms—for example, how Google is dependent on the Apple App Store for the distribution of the Google Maps application for iPhones. These bills would provide protections for everyone on the covered platforms, including affected business lines of the other covered entities.⁶³ These include, for example, gains for Apple’s new streaming service, Apple TV+, which recently reduced functionality of its Android TV app, likely because it did not want to pay the app tax to Google (which mirrors the percentage Apple takes from apps on its platform).⁶⁴ The Open App Markets Act would give Apple a chance to increase the functionality of its app on the Android TV platform or communicate about alternatives. Similarly, as noted above, the full functionality to buy Amazon Kindle eBooks would likely become available via the Kindle mobile apps on iPhone and Android, which would increase sales of Kindle eBooks.

To date, those few companies affected by these bills have focused on the potential negative effects while remaining silent on the tremendous benefits—and profits—their products would gain from increased access and protection for other covered platforms. The exception is Microsoft, which has announced its voluntary compliance with many of the rules laid out in Open App Markets. Brad Smith, Microsoft’s president, has tweeted in support of the bill.⁶⁵ Consumers too would significantly benefit from additional competition among Big Tech companies.

U.S. companies will enjoy more equal footing, delivering greater benefits to consumers

Many of the practices that American Innovation and Open App Markets would require or allow are already available to other large gatekeeper online platforms through special deals. Similarly, many of the benefits these bills would deliver to consumers are already being rolled out to people elsewhere in the world via regulatory or legal requirements.

For example, some large gatekeeper companies have been able to negotiate special exceptions to app store pricing for some of their apps,⁶⁶ which remain opaque or unavailable to most other apps.⁶⁷ Legal proceedings have forced companies

to make some concessions, such as removing the restriction on communicating with users outside an app through services such as email, while leaving restrictions on communicating in-app in place.⁶⁸ Open App Markets would remove restrictions on legitimate business communications.⁶⁹

In parallel, the increasing regulatory pressure in other countries has also forced significant changes on app stores in South Korea, the Netherlands, and elsewhere.⁷⁰ Soon, the nearly 450 million people in the European Union stand to gain from passage of the Digital Markets Act (DMA) and the Digital Services Act (DSA), which will affect the covered platforms in the two Senate bills and are further described below.⁷¹ The proposals in American Innovation and Open App Markets would guarantee that Americans enjoy similar benefits to those already negotiated by some other regulators, such as prohibiting restrictions that limit consumers and businesses from using alternative payment processors on covered platforms and in app stores.⁷² Companies are already building the capabilities to comply with these changes, proving it can be done. U.S. consumers and businesses deserve access to these benefits as well.

The bills ensure America does not cede technology policy leadership to the EU

The European Union is advancing sweeping new laws to regulate online services with the DMA and the DSA.⁷³ Those two acts introduce rules for, respectively, very large online platforms and digital services more broadly, covering anti-competitive behavior, transparency, interoperability, online content, deceptive design, targeted advertising, and more. The European Union came to provisional political agreements on both proposals in early 2022. The European Parliament and Council are expected to pass the proposals later this year, after which additional details on EU enforcement will be crafted and unveiled.⁷⁴

Though the European proposals tackle a broader swath of issues, American Innovation and Open App Markets grapple with some similar problems. These include balancing concerns between competition and privacy, curbing self-preferencing, making app stores fairer, enabling interoperability, and effectively addressing novel harms to competition. Similarly, American Innovation tasks the Department of Justice and the Federal Trade Commission with drafting new enforcement guidelines to identify behaviors that the agencies will treat as violations of the statute.⁷⁵

Regulators on both sides of the Atlantic could soon be grappling with novel and difficult enforcement questions whose answers will affect the messaging, e-commerce, mobile, search, social media, and internet services Americans use every day. Guidance that touches on the enforcement of competition rules that affect data-sharing and interoperability will be consequential for popular consumer services.

If Congress passes these bills, very large online platforms, including mobile app stores, will be complying with similar but potentially distinct U.S. and European laws in the next few years. The development of the U.S. enforcement guidelines and the ongoing EU rulemaking provides the United States and the European Union an important opportunity to work together to conceive and harmonize some aspects of their respective approaches. This could establish rights-respecting approaches to eliminating self-preferencing, banning discrimination on large online platforms, and making app stores fairer. In particular, sufficiently considered guidance is needed to advance the dual goals around competition and privacy. Weak enforcement from either body risks harming both. Instead, what is needed is thoughtful, effective bilateral enforcement that balances these goals.

If Congress fails to pass the bills into law, the United States will continue to cede regulatory leadership in this space to the European Union and as a result have little leverage to advocate for U.S. interests or values—leaving American consumers and companies on the sidelines to be regulated by Brussels. Regulation of the large, global technology platforms is overdue. But the experiences of U.S. consumers on these platforms could soon be fundamentally altered by EU requirements in which they have no say. Though the bills now working their way through Congress stop far short of establishing the needed rulemaking capacity for sustainable governance of digital markets in the United States, allowing Europe to proceed without any parallel progress would be a mistake.

Understanding the bills’ potential risks and areas of concern

A range of questions and concerns have been raised in the course of deliberation on these proposals. Questions about the bills’ definitions and how they may affect privacy, national security, content moderation, and litigation risk have all rightly been a part of both the public conversation and the drafting process. While much of this scrutiny has been in good faith, incorrect and misleading claims about the bills’ implications have also been advanced. For American Innovation, the bill’s authors have accommodated feedback on concerns regularly, including their tweaks at the bill’s markup and the recent late May release of an updated manager’s amendment addressing some of the concerns highlighted below.⁷⁶ The following section tackles each area of concern in turn. It assesses the benefits and risks of the potential consequences in each area, walks through issues raised, and, where necessary, explores the dissonance between the bills’ likely effects and incorrect industry claims.

Concerns over the definition of covered platforms

Some commentators have criticized the definition of covered platforms in the American Innovation and Choice Online Act⁷⁷ for “arbitrarily defined requirements,” for applying only to certain large technology companies, for not applying to all online platforms, and for only affecting U.S. companies.⁷⁸

The definition of “covered platform” in the act⁷⁹ is anything but arbitrary. It is built off research from more than 10 Senate Judiciary Antitrust subcommittee hearings that included information on competition in app stores, home technologies such as smart speakers, big data, and the impact of consolidation and monopoly power on innovation.⁸⁰ These Senate hearings followed an extensive 18-month investigation on competition in digital markets from the House Judiciary Committee⁸¹ and are further informed by parallel work and investigations by government agencies in the United Kingdom, European Union, Australia, Germany, and others.⁸² These government investigations mirrored numerous academic works from recent years that aimed to identify the common characteristics of and competition issues in digital markets.⁸³

The definition of “covered platform” in American Innovation is a functional one that does not target size alone.⁸⁴ Furthermore, the “covered platform” designation applies only to specific business lines that qualify as a covered platform, rather than all the business lines of a company that owns a qualifying covered platform. Being a big platform with many users alone does not make an online platform a covered platform; instead, it is designed to apply only to the covered platforms with immense gatekeeping power, which American Innovation calls “critical trading partners.”⁸⁵ As CAP has written previously, these digital gatekeepers pose a unique risk.⁸⁶

Looking solely at economic outcomes does not fully capture the risks posed by digital gatekeepers. Very large digital gatekeepers are systemically important, as their actions have major implications for the U.S. economy, society, and security. Similar to systemically important financial institutions, they pose widespread risks given their status as functionally essential and ubiquitous informational infrastructure. Abusive behavior toward consumers, potential competitors, or corporate negligence on a range of critical public interest issues—such as cybersecurity, data privacy, discrimination, political advertising, content moderation, and site reliability—can generate cascading social harms and significant economic costs. Americans want, and regulators should provide, oversight over digital gatekeepers that have the potential to cause massive harm.

The power of digital gatekeepers over smaller online platforms is why self-preferencing on those online platforms is so powerful and anti-competitive. American Innovation’s restrictions on self-preferencing on covered platforms that are critical trading partners correctly addresses the places where the greatest harm can be leveraged on the most people, harm that smaller online platforms who are not critical trading partners cannot impose. For example, in 2019, reporter Kashmir Hill attempted to intentionally block five of the largest online companies from her internet usage, all of which would be covered platforms under American Innovation, and found it nearly impossible.⁸⁷

Smaller online platforms may also require future legislation to establish rules of the road for all platform commerce. CAP has previously raised the need for such rules in its work proposing a new regulatory framework for all online services.⁸⁸

While many of the online platforms that would be designated as covered platforms in American Innovation are U.S. companies, the criteria would include companies with more than 1 billion worldwide monthly active users, which would include Chinese-owned TikTok and potentially other foreign-owned online platforms.⁸⁹

These tests will apply not just to today’s gatekeepers but also to any new platforms that might amass critical gatekeeping power in the future. Given fairer conditions to compete, some small and medium-sized business might find increased success and grow into qualifying as covered platforms. This is a feature, not a bug, of American Innovation. It embodies the principle that any digital platform that amasses gatekeeper power cannot be allowed to tilt the playing field through self-preferencing, today or in the future. As the United States continues to tackle the striking lack of regulation that has enabled predatory practices to flourish online, starting with and prioritizing rules for the largest platforms in order to tackle the most widespread economic harms is a sensible strategy.

Important considerations around privacy and security

Questions have been raised about whether the bills strike the right balance around privacy, security, and competition.⁹⁰ Some have argued that the bills’ focus on economic provisions inherently demotes privacy to a secondary consideration.⁹¹ It has been suggested that, under various provisions of the new bills, privacy rules requiring that platforms apply specifically to third-party vendors, developers, or advertisers may be at risk if they are also found to harm competition.⁹² The bills have grappled with this risk, however, by exempting potentially anti-competitive actions that are necessary measures for privacy and security through affirmative defenses.⁹³ Platforms still have wide latitude to make privacy and security improvements on their platforms as they see fit. But even actions that may have anti-competitive effects are explicitly allowed if they enhance consumer privacy, safety, or security⁹⁴ and meet the bills’ qualifications around being reasonably tailored and reasonably necessary,⁹⁵ among other factors.

For example, a January 2022 blog post from Google President of Global Affairs Kent Walker criticizes an unnamed “Senate bill.”⁹⁶ While the post does not identify specific bills, the timing and language of the blog post coincides with American Innovation’s markup hearing in the Senate Judiciary Committee.⁹⁷ Walker writes, “[The bill] still includes all the provisions that hamper our ability to offer security by default on our platforms, exposing people to phishing attacks, malware and spammy content.”⁹⁸ The blog post does not seem to acknowledge the significant affirmative defenses granted to protect privacy, safety, or security under American Innovation or why those affirmative defense provisions would be insufficient to allow Google to continue providing these services. Follow-up from Google after the release of the latest update to American Innovation in late May reiterated many of the points from the blog post but provided few additional details.⁹⁹ It is difficult to assess further from these comments, though CAP welcomes further analysis for discussion.

By putting the standard at “material harm to competition,” the bar to successful litigation under American Innovation is high.¹⁰⁰ But should platforms need to invoke an affirmative defense against such a challenge under either bill, some debate has occurred around whether the varied standards to invoke affirmative defenses around privacy and security are too high.¹⁰¹

In a letter to the Senate Judiciary Committee, Apple raised a concern around affirmative defenses specifically, noting, “Apple would have to prove the protections were ‘necessary,’ ‘narrowly tailored,’ and that no less restrictive protections were available. This is a nearly insurmountable test, especially when applied after-the-fact as an affirmative defense.”¹⁰² In its letter, Apple supports requiring privacy and security protections to “be non-pretextual and reasonably tailored to protect consumers.”¹⁰³

In a March letter to Sens. Klobuchar and Grassley, the Center for Democracy and Technology (CDT) echoed concerns around invoking the affirmative defenses, noting, “The bill recognizes these risks, and explicitly provides an affirmative defense for steps a platform might undertake to protect users’ privacy and security. But the hurdles to invoke this defense are more substantial than need be to further the bill’s pro-competitive purpose.”¹⁰⁴ In particular, CDT raised concerns about the term “narrowly tailored” as part of the “strict scrutiny” test and made recommendations that include removing “narrowly tailored” and shifting the burden on “nonpretextual.”¹⁰⁵

In late May, after consultation with key stakeholders including other senators, industry, and civil society, Sen. Klobuchar’s office released an updated manager’s amendment for American Innovation.¹⁰⁶ It made changes to further clarify the affirmative defenses by removing “pre-textual” along with changing “narrowly tailored” to “reasonably tailored.”¹⁰⁷ These changes represent a thoughtful balancing to allow for covered platforms to take appropriate actions to protect safety, privacy, and security. The bills’ narrow tailoring to very large online platforms ensures such burdens are not inappropriately borne by smaller businesses.

It is also important to remember that American Innovation can only be enforced by the U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), and state attorneys general,¹⁰⁸ which means business users complaining about privacy, safety, or security measures would need to convince one of those government law enforcement agencies to take up the case for them in federal district court.¹⁰⁹

The FTC and DOJ can further ensure that privacy-protective actions are exempted by elaborating in the enforcement guidelines that American Innovation instructs them to issue.¹¹⁰ The FTC, as America’s de facto privacy regulator (in the absence of a general federal privacy law or rules), can bring its expertise in both competition and privacy to the crafting of these guidelines. It is directed to “define the term data for the purpose of implementing and enforcing this Act.”¹¹¹ The FTC is well-positioned, for example, to identify what kinds of business user data might be appropriate to restrict business user access to¹¹² on the grounds of privacy, safety, or security.¹¹³

It is impossible to fully adjudicate arguments about uncertainty in the courts for a proposed law. It is important to note that if litigation is brought under either American Innovation or Open App Markets, it will result in the eventual development of a body of case law that will help provide clarity for current and future covered platforms, resulting in fewer of these open questions.

Industry has argued against the Open App Markets Act specifically by suggesting that giving consumers choice of other app store providers undermines security.¹¹⁴ Such a concern holds that giving consumers choice among app stores may heighten security risks, such as malware, should consumers choose third-party stores or developers with poor security vetting.¹¹⁵ Concerns about malware or other security vulnerabilities should be taken seriously. However, one has to look no further than another popular Apple product to see that marginal increases in avenues for consumers to pursue risky behaviors can be managed: Mac users can download software from anywhere online they choose, not only from Apple, and Apple’s strong security features continue to offer significant protection to users in that environment.

While available data suggest somewhat higher levels of malware in Android (where downloading outside the designated app store is already allowed)¹¹⁶ and Macs relative to iOS,¹¹⁷ it is not necessarily the case that maintaining the competitive status quo is the best way to reduce security vulnerabilities. Competitive pressure can and should improve security offerings. Consumers will still be able to stick to the Apple App Store if that’s what they trust. But opening the markets can also enable specialty app curation to flourish—allowing app marketplaces that specifically focus on security, children’s safety and development, American small businesses, independent developers, or other areas of special interest to consumers to emerge. And nothing would stop Apple, for example, from offering superior security protections of their marketplaces and cautioning users against alternatives.

These bills primarily affect security and privacy by reintroducing much-needed competitive pressure. Over time, more competitive markets can provide incentives and opportunities for greater innovation, which can result in the development of more secure and better privacy-preserving technologies.¹¹⁸ Protecting Americans' cybersecurity is a dynamic process; allowing digital gatekeepers to maintain control of key arteries in the absence of competitive pressure to improve security offerings misses opportunities to stay ahead.

Ultimately, Congress must address the broader landscape of concerns around privacy and security by finally advancing much-needed federal privacy legislation and additional cybersecurity regulations. CAP supports a comprehensive privacy bill that includes robust civil rights protections, without which there is little way to ensure that Americans' rights are protected online.¹¹⁹

Concerns around national security

Some national security experts and technology sector industry groups have argued the new antitrust bills put American national security at risk.¹²⁰ These critiques have suggested that regulating anti-competitive behavior by U.S. tech giants may hamper their ability to compete globally or hinder cybersecurity. Other national security leaders have supported the bills and argued that they will help the American economy and support consumers without those purported downsides.¹²¹

Looking at the discussion specifically around American Innovation, a recurring concern has been whether removing anti-competitive data restrictions and allowing commercial data-sharing would enable the Chinese government or other foreign governments to access data about Americans.¹²² The provision in question, Section 3(a)(7), states that it would be unlawful for a covered platform to:

materially restrict or impede a business user from accessing data generated on the covered platform by the activities of the business user, or through an interaction of a covered platform user with the products or services of the business user, such as by establishing contractual or technical restrictions that prevent the portability by the business user to other systems or applications of the data of the business user.

Critics have claimed this provision would “require large U.S. technology companies to disclose user data to competitors—including those that are foreign-controlled.”¹²³ As Google's president of global affairs wrote about a Senate bill that the authors presume to be American Innovation, “it says nothing about provisions that could require sharing data with countless other bad actors and

foreign companies.” (The presumption is that this blog post refers to American innovation, given that it was posted before the Senate Judiciary committee markup of American Innovation and is updated to reference “an amendment to the Senate bill” that mirrors the manager’s amendment introduced and adopted ahead of the markup of American Innovation.)¹²⁴

Some have interpreted related provisions around interoperability in American Innovation¹²⁵ to suggest that “requiring non-discriminatory access for all ‘business users’ (broadly defined to include foreign rivals) on U.S. digital platforms would provide an open door for foreign adversaries to gain access to the software and hardware of American technology companies.”¹²⁶ Others have claimed that with interoperability “there is a significant risk that companies receiving ported data would turn the data over to foreign government authorities or use them for other nefarious purposes.”¹²⁷

These critiques of American Innovation are deeply misleading. The data covered are clearly only a business user’s own data: that which it has generated during its business activities on a covered platform.¹²⁸ It is not a requirement that a major platform must hand over all the data it has about its users to any business users on the platform. This is simply a requirement that a business have access to data from its own usage of the platform to conduct business with its customers—the same kind of data a business might generate and have access to in any other sphere of commerce. Assuming an inability of businesses to access, export, and save their own business data while covered platforms can access that same data and use it to their competitive advantage is unreasonable.

Upon closer examination, many of the documents published highlighting national security criticisms are focused on provisions from the six antitrust bills that passed out of the House Judiciary Committee in 2021.¹²⁹ Only one of the House bills—HR. 3816, the American Choice and Innovation Online Act¹³⁰—has a Senate companion bill that has passed out of the Senate Judiciary Committee, the similarly named S. 2992 (the American Innovation and Choice Online Act), which is analyzed here.¹³¹ Even specific criticisms of American Innovation or Open App Markets are often intermixed with criticisms of the House bills, which makes analyzing some of these charges very difficult, as they are simply not applicable to the two Senate bills that are the focus of this report. This can create challenges in deciphering specific criticism of the two senate bills; CAP flags for the reader’s context.

Sens. Klobuchar and Grassley have made numerous good-faith attempts to minimize risks to national security in American Innovation, even within the limited scope of data described above. For example, an amendment from Sen. John Cornyn (R-TX) was incorporated during the markup of American Innovation to address concerns around national security risks,¹³² including specific language to prevent data-sharing with the Chinese government.¹³³ Accordingly, the definition of “business user” allows for covered platforms to deny any requests from any business user who is a clear national security risk or “foreign adversary.”¹³⁴ American Innovation defines “business user” as “a person that uses or is likely to use a covered platform for the advertising, sale, or provision of products or services.”¹³⁵ This definition is necessarily broad and would have to include “foreign rivals” because almost all foreign businesses operating online do business with covered platforms under American Innovation given their incredible reach. But the claim that it “would provide an open door for foreign adversaries”¹³⁶ ignores that the act’s definition of “business user” specifically names and excludes “foreign adversaries,” stating that a business user “does not include a person that—(i) is a clear national security risk; or (ii) is controlled by the Government of the People’s Republic of China or the government of another foreign adversary.”¹³⁷ This means that covered platforms outright do not have to give access to or comply with requests from any business user who is a clear national security risk. In addition, to address specific concerns raised around the nondiscriminatory interoperability provision, the most recent manager’s amendment to American Innovation allows for additional coverage of cybersecurity measures by adding “except where such access would lead to a significant cybersecurity risk.”¹³⁸

American Innovation’s affirmative defenses allow a covered platform to limit the data accessed by any business user, not just those who might be controlled by a foreign government, to “protect safety, user privacy, the security of non-public data, or the security of the covered platform,” even if it materially harms competition.¹³⁹ The bill also instructs the FTC to “define the term data for the purpose of implementing and enforcing this Act,”¹⁴⁰ which is likely to identify certain kinds of data, such as personally identifiable information that would not otherwise be available to a business user, could be withheld by a covered platform from all business users based on privacy, safety, and security. Drawing on its privacy experience, the FTC can further ensure clarity around protecting privacy rights as it issues enforcement guidance, working with the Department of Justice, which itself brings national security expertise.¹⁴¹

Because these data are the company's own business data, most or all are already held by the company and already at risk of being seized by a foreign government with jurisdiction. If critics' arguments about foreign government data access¹⁴² are to be carried out to their logical conclusion, it appears critics are arguing that foreign companies should not be allowed to do business with U.S. covered platforms at all: If risk of foreign government access to business data of foreign companies on U.S. platforms is too great, then the risks critics are concerned about already exist. Negligible additional risk is created by the bills. A position that foreign companies—many of whom also have little choice but to use major U.S. covered platforms—should not be allowed to do business on U.S. platforms seems misguided. As noted above, where there are particular security concerns about foreign governments' access, American Innovation specifically includes numerous provisions that thoroughly address concerns around national security risks, foreign adversaries, or foreign governments¹⁴³ and provide ample defenses around privacy, safety, and security.¹⁴⁴

Finally, should a foreign company wish to object to denial of data access for some reason other than the various affirmative defenses and protections outlined above, it would have almost no legal recourse. The lack of a private right of action under American Innovation means that a foreign company that feels aggrieved would need to convince the DOJ, the FTC, or a state attorney general¹⁴⁵ to file suit on its behalf in U.S. federal district court,¹⁴⁶ a highly unlikely occurrence.

For its part, the term “business user” only appears in Open App Markets once, in a section that clearly states, “Nothing in this Act may be construed—(6) to require a covered company to interoperate or share data with persons or business users that—(A) are on any list maintained by the Federal Government by which entities are identified as limited or prohibited from engaging in economic transactions as part of United States sanctions or export control regimes; or (B) have been identified by the Federal Government as national security, intelligence, or law enforcement risks.” As the text states, this is not an open door to foreign adversaries.¹⁴⁷ Further, Open App Markets allows for app stores to take actions, even those generally prohibited by the bill “for an action that is (A) necessary to achieve user privacy, security, or digital safety.”¹⁴⁸ Finally, the bill does not allow a lawsuit to be brought by “[a] developer of an app that is owned by, or under the control of, a foreign state.”¹⁴⁹

Other claims that these bills will affect national security suggested they would “break up large U.S. technology companies” or “prohibit large U.S. technology companies from engaging in significant new acquisitions or investments” in a

way that hindered U.S. competitiveness.¹⁵⁰ These are a mix of hyperbolic and misleading claims based on earlier versions of the five House bills. They are also simply not applicable to the two bills likely to make their way to the Senate floor in summer 2022.

National security criticisms of the bills fall short under closer examination. But the potential benefits to U.S. national security are worth considering. While software and online services have grown to be a major leading industry for the United States, anti-competitive behavior by today's gatekeeper platform operators threatens that dynamism and poses real national security risks.¹⁵¹ Major platforms maintain a vacuum of competitive pressure in part through the self-preferencing and discriminatory practices that are prohibited by the bills. The lack of competition and real challengers in major areas of online commerce results in stagnation, loss of innovation, and lack of U.S. economic growth in key online markets. Preventing platform providers from abusing their dominance to thwart potential competitors can help restore the competitive pressure that is required if the United States hopes to continue as a global leader in technology.¹⁵²

For example, consider that the only recent competition in the consumer social media space has come from China, in the form of TikTok. TikTok perfected itself in the Chinese market, protected from U.S. tech monopolies.¹⁵³ The only reason it was able to compete with U.S. tech monopolies was because it had already perfected its algorithm and had billions of dollars in cash reserves to pay other platform monopolies for online advertising to gather installs on mobile phones.¹⁵⁴ These are conditions today that no U.S. startup can hope to replicate. This is shown clearly by the data. Despite the incentive of high rates of return, the United States has failed to produce a new competitor to dominant online platforms, ceding the opportunity to companies from countries such as China. The United States should be doing all it can to create dynamic new American apps that can compete with the TikToks of today and tomorrow that do not need billions of dollars in cash reserves to buy their way into app installs on smartphones. America should not be protecting companies that have failed to succeed even after leveraging self-preferencing on their own gatekeeper platforms.¹⁵⁵ American Innovation is, in this sense, aptly named: Creating a level playing field online will help maintain the dynamic, competitive U.S. markets that are a major source of economic and global power.

Evaluating the risk of litigation around content moderation

Concerns have been raised about the potential impact on “content moderation” on the covered platforms in each of the bills—both the potential for increased litigation by disgruntled business users against whom platforms take action and the potential “chilling effect” of enforcing terms of service in the face of increased legal risk.¹⁵⁶ Importantly, however, both bills preserve platforms’ ability to enforce their terms of service.¹⁵⁷ Neither bill creates restrictions on content moderation writ large.

Nonetheless, observers have questioned whether a disgruntled business user or individual who wishes to twist these rules to advance a content-based grievance could succeed. Specifically under scrutiny is Section 3(a)(3) of American Innovation, which makes it unlawful for a covered platform to “discriminate in the application or enforcement of the terms of service of the covered platform among similarly situated business users in a manner that would materially harm competition.”¹⁵⁸ This provision aims to address critical concerns about businesses using terms-of-service enforcement as a cudgel against business users with whom they have grievances or from whom they face potential competitive threats. Experts suggest that platforms would turn to these tactics once their abilities to directly self-preference and discriminate are banned by Section 3(a)(1) and 3(a)(2) of the bill. In a recent blog post on the Senate antitrust bills, Public Knowledge described the importance of Section 3(a)(3) in American Innovation and provided examples:¹⁵⁹

The bans on self-preferencing in the rest of the bill are key to fair competition on the platform, but 3(a)(3) is key to fair competition against the platform. We want to make sure that these platforms actually face competition that could unseat them from their gatekeeper status. That kind of competition might come from a company that they compete directly against on their own platform, or it might not.

Drawing on a history of anti-competitive platform conduct in the style of selective enforcement of platform rules, drafters have included this provision as a general purpose bulwark against what could be the next wave of anti-competitive conduct.

A complainant hoping to use 3(a)(3) to address content moderation concerns would be required to overcome high process and evidentiary bars. A complainant would need to convince federal or state enforcement¹⁶⁰ to take up such a content moderation action, which is the only path to court under American Innovation,

then that law enforcement agency would need to prove in a federal district court¹⁶¹ that it: 1) resulted in discriminatory enforcement of its terms of services;¹⁶² and 2) resulted in material harm to competition broadly,¹⁶³ not just the individual bringing suit. Should a platform invoke an affirmative defense, the court would also need to find it was not necessary to protect safety, privacy, or security or to comply with the law.¹⁶⁴

To illustrate the type of case that raises concern, consider the removal of conspiracy theorist Alex Jones from his YouTube channel.¹⁶⁵ YouTube currently enjoys First Amendment protections to moderate its private platform as it sees fit, including by removing Jones. Should Jones wish to get around these protections by arguing terms-of-service enforcement discrimination that resulted in material harm to competition under the bill, he would first have to persuade the DOJ, FTC, or a state attorney general to take up his case, as there is no private right to action in American Innovation, and Open Apps Markets does not apply here. The government would then need to prove in federal court that YouTube did not merely apply its terms of service in banning Jones, but that it applied the terms of service in a discriminatory fashion among “similarly situated business users.” In other words, the complainant must prove that Jones was treated differently than other YouTube users similarly violating the terms. Further, it would need to show that discriminatory application of the terms of service resulted in material harm to competition in the marketplace. It is highly unlikely that such an effect could be shown, since YouTube earned revenue from Jones’ videos, and operations of competing platforms were not harmed by the ban. However, even if a court were convinced the ban produced competitive harm, enforcing the terms of service would be protected if a platform demonstrated it was reasonably necessary to prevent a violation of the law, protect safety, or protect the security of the covered platform. Given Jones’ long history attacking victims of a school shooting and spreading false cures for COVID-19, among other outrages, these actions should fall squarely in the category of YouTube’s ability to take action to protect the safety or security of its users.¹⁶⁶

Even if aggrieved parties convince federal or state antitrust enforcers to pervert reasonable competition rules to make unreasonable content moderation claims, it seems highly unlikely that federal courts would find these attempts to have merit. Similarly, it seems unlikely that complainants would be able to construct sufficient evidence to meet the bills’ standards. The risk that these claims will succeed in federal court is low, but it is admittedly not zero; there has been an increase in ideologically motivated rulings. In recent years, ideologically motivated litigation has occasionally found success in federal courts—which themselves have become

more ideological in nature—even when serious legal scholars have found cases without legal merit.¹⁶⁷ Again, the risk that such cases will succeed seems low given the bill’s construction, though there are concerns about the precedents that could be set should the cases succeed at the district court and be appealed through the federal judicial system. However, it should not be substantially riskier than the numerous litigation risks these covered platforms already face. As Yelp’s general counsel Aaron Schur recently noted: “[American Innovation] would not expose companies to any significant new legal risk based on their content moderation practices. That’s particularly important because it means companies would not be disincentivized to prevent their platforms’ misuse.”¹⁶⁸ Drafters have taken steps to minimize the abusability of these rules. It is an untenable position for Congress to stop legislating in the face of any potential misuse of the law.

Similar concerns have been raised about a nondiscrimination provision in Open App Markets.¹⁶⁹ Section 3(e) of the act reads: “A covered company shall not provide unequal treatment of Apps in an App Store through unreasonably preferencing or ranking the Apps of the Covered Company or any of its business partners over those of other Apps in organic search results.”¹⁷⁰ Some have suggested that, given the broad definition of “business partner” and the open-ended definition of “unreasonably preferencing,” aggrieved developers would be able to take issue with a variety of practices employed by a covered platform against most major tech companies.¹⁷¹ Indeed, Open App Markets offers a private right of action (though limited)¹⁷² for developers¹⁷³ in addition to enforcement by state and federal bodies.¹⁷⁴ Some have raised the question of whether this construction needlessly invites litigation. The argument goes that it enables complainants to point to any number of other app developers (especially providers of popular services, who are likely in some kind of business relationship with Apple or Google and on which an example of any kind of content moderation presence or absence can be found) that have similar problems but where equivalent action was not taken.¹⁷⁵ However, Section 3(e)’s title, “self-preferencing in search,” clearly limits means of unreasonably preferencing as described in Section 3(e)(2) to a finite universe of in-search operations. Thus, even though Section 3(e)(2)(A) specifies what “unreasonably preferencing” includes and leaves some room for further interpretation, rather than giving a precise definition of each possible action, the universe of operations here is of smaller scope than some critics appear to be concerned about. It seems unlikely that a developer aggrieved over content moderation decisions—such as removal from the store—could successfully use this provision about unreasonable preferencing of first-party or business partner services within app store searches to launch the type of claims that could have any real merit in court.

Finally, recent laws passed by Texas and Florida limit content moderation on social media platforms.¹⁷⁶ These laws are in various stages of litigation before two different circuit courts, and it is increasingly possible that the U.S. Supreme Court will address the issue of online content moderation in the near future.¹⁷⁷ Should either of these laws be allowed to stand by the Supreme Court, it is certainly difficult to imagine a state attorney general choosing to use a provision in these antitrust laws for a purpose they were not intended for, instead of working with the state legislature for more direct changes and challenges to content moderation on social media platforms.

Evaluating the potential for a chilling effect on content moderation

The second concern raised is that this added litigation risk may have a chilling effect on platforms' content moderation and enforcement of terms of service.¹⁷⁸ Here, observers have raised the possibility that companies will weaken their enforcement of terms of service to avoid any potential lawsuits, however unlikely they are to succeed, from complainants who wish to advance content moderation grievances.¹⁷⁹ Scrutiny around these potential effects is merited. Content moderation practices long supported by CAP¹⁸⁰ have consistently found a gap between content moderation promises and enforcement, especially on the largest social media platforms.¹⁸¹

There are two primary arguments raised about the potential chilling of content moderation, the first around enforcement decisions on social media platforms and the second around enforcement actions on apps in app stores.

Social media platforms have long made the argument that functional content moderation is a competitive advantage. The social media platforms that would be affected by American Innovation are primarily funded by advertising and have heavily touted their efforts around “brand safety” to their advertisers, marketing it as a core feature of their advertising products.¹⁸² Social media platforms have repeatedly insisted that their content moderation efforts make them a safe place for advertisers to spend money.

For example, during the 2020 #StopHateForProfit advertiser boycott of Facebook, civil and digital rights groups pressured advertisers to stop their ads for a period time to object to Facebook's inadequate content moderation.¹⁸³ This led the company now known as Meta to argue that “Facebook Does Not Benefit from Hate”

and that its content moderation polices are critical because “[b]illions of people use Facebook and Instagram because they have good experiences—they don’t want to see hateful content, our advertisers don’t want to see it, and we don’t want to see it. There is no incentive for us to do anything but remove it.”¹⁸⁴

Facebook and YouTube are advertiser-supported platforms and nearly all of their revenue comes from advertisers—that is, advertisers who demand content moderation. If social media platforms were to chill their content moderation due to the potential litigation risk of a government agency succeeding in federal court in using antitrust laws in unintended ways, then the real implications of nonenforcement would seem to impose far greater economic cost to advertiser-supported platforms than the marginal litigation risk.

It is also important to note that not a single company that manages a social media platform that would be covered under American Innovation has stated publicly that it will be forced to reduce individual content moderation due to potential litigation risk.

While social media platforms have one form of content moderation, app stores have a different form of content moderation that could be affected by American Innovation or Open App Markets. There is concern that these bills could cause app stores to hesitate in removing apps for content moderation reasons.¹⁸⁵

An oft-cited situation in this debate is that of Parler, a social media app popular with right-wing users that was removed from the Apple iOS App Store and the Google Play store shortly after the January 6 attacks on the Capitol due to inadequate content moderation policies.¹⁸⁶ Critics have argued that these bills’ potential additional litigation risk may make Apple or Google less likely to remove an app such as Parler in the future. However, it is important to note that concerns about Parler’s content and lack of moderation were raised in the months before the January 6 attack (including by Parler itself) but did not result in any actions by the app stores that have been made public.¹⁸⁷ Today, Parler has returned to the App Store with moderation policies that meet the App Store requirements but which many experts still consider to be inadequate.¹⁸⁸ It is difficult to know if Parler’s removal from the App Store for lack of moderation is a common occurrence or a rare one, as Apple does not break down categories, such as lack of adequate moderation, in its public releases about the App Store, though it does provide broad categories of data on apps rejected.¹⁸⁹

In this sense, Parler is a flawed example to highlight, as the app now exists again in the App Store, with many critics arguing that Parler operates in only a marginally more responsible position than it did prior to January 6.¹⁹⁰ As discussed, it wouldn't be eligible for litigation under Open App Markets; the action taken here was on a terms-of-service violation, and Parler doesn't appear to have grounds as a self-preferring in search issue. As discussed, litigation under American Innovation would require a federal or state law enforcement agency to take up the case and clear the high bars around discriminatory enforcement, material harm to competition, and not being necessary to protect safety, security, or comply with the law.

Ultimately, the likely effects of these bills on content moderation, security, and privacy are positive ones: introducing competitive pressure that may result in an improvement of the status quo. These bills provide further incentives to get it right on the issues people care about most.

It's important to ensure that laws targeted at competition or privacy issues do not inadvertently undermine other areas of public interest such as improved content moderation. However, in these cases, the litigation pathways offered by the bills seem highly unlikely to generate the broad chilling of speech or moderation that would harm freedom of expression and challenge the financial self-interest of the platforms to moderate content, especially if they are advertiser-supported platforms. American Innovation's Section 3(a)(3) certainly does not "effectively ban content moderation"¹⁹¹ as some hyperbolic critics charge, which is a wildly inaccurate way to describe the small risk that a government enforcement agency may attempt to abuse unrelated provisions to address content moderation concerns and that a series of courts could then rule in its favor.

A greater diversity of businesses facing real competition will offer consumers more choice in moderation approaches. Such competition can get away from the monoculture of today's search and social media services, making the information ecosystem more resilient to informational manipulation and threats. It may also catalyze further and much-needed improvements in content moderation practices and technologies.

Conclusion

The American Innovation and Choice Act and the Open App Markets Act put forth reasonable proposals to alleviate some of the most economically harmful behaviors of extremely large digital platforms. These bills do not solve every single problem associated with online services, nor should that be the bar by which any piece of legislation for a swath of issues so broad be judged. As the legislative process continues, the authors of the bills continue to hear from stakeholders and may make further tweaks to address concerns. CAP applauds any efforts to improve legislation, but none of the current concerns are significant enough to outweigh the considerable benefits of the bills. Both bills contribute to a necessary modernization of U.S. antitrust laws. In weighing the spectrum of the bills' potential impacts, CAP concludes that they are likely to protect American consumers, small businesses, and innovation online. CAP endorses the American Innovation and Choice Online Act and the Open App Markets Act and urges Congress take meaningful action to enhance consumer choice and competition online by passing these bipartisan bills into law this summer.

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Endnotes

- 1 Erin Simpson and Adam Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services" (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/how-to-regulate-tech-a-technology-policy-framework-for-online-services/>.
- 2 Jerrold Nadler and David N. Cicilline, "Investigation of Competition in Digital Markets" (Washington: House Subcommittee on Antitrust, Commercial and Administrative Law, 2020), available at https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519; Marc Jarsulic, "Using Antitrust Law to Address the Market Power of Platform Monopolies" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/article/using-antitrust-law-address-market-power-platform-monopolies/>.
- 3 Jarsulic, "Using Antitrust Law To Address the Market Power of Platform Monopolies"; Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 4 Jarsulic, "Using Antitrust Law To Address the Market Power of Platform Monopolies."
- 5 American Innovation and Choice Online Act of 2022, S. 2992, 117th Cong., 2nd sess. (March 2, 2022), available at https://www.klobuchar.senate.gov/public/_cache/files/b/9/b90b9806-cecf-4796-89fb-561e5322531c/B1F51354E81BEFF3EB96956A7A5E-1D6A.sil22713.pdf; Open App Markets Act of 2022, S. 2710, 117th Cong., 2nd sess. (February 17, 2022), available at <https://www.congress.gov/bill/117th-congress/senate-bill/2710/text?r=1>.
- 6 Ashley Gold, "Scoop: Schumer seeks tech antitrust bill vote by early summer," Axios, May 19, 2022, available at <https://www.axios.com/2022/05/19/scoop-schumer-seeks-tech-antitrust-bill-vote-by-early-summer>.
- 7 Economic Security Project Action and Others, "Letter in support of AICO and OAMA," Economic Security Project, April 25, 2022, available at <https://www.economicsecurityproject.org/wp-content/uploads/2022/04/In-support-of-AICO-and-OAMA.pdf>.
- 8 Erin Simpson and Adam Conner, "Executive Summary: A Technology Policy Framework for Online Services Regulation" (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/executive-summary-a-technology-policy-framework-for-online-services-regulation/>.
- 9 U.S. Senate Committee on the Judiciary, "Results of Executive Business Meeting – January 20, 2022," January 20, 2022, available at <https://www.judiciary.senate.gov/imo/media/doc/EBM%20Results%201.20.222.pdf>; U.S. Senate Committee on the Judiciary, "Results of Executive Business Meeting – February 3, 2022," February 3, 2022, available at <https://www.judiciary.senate.gov/imo/media/doc/EBM%20Results%20-%202022-02-031.pdf>.
- 10 Gold, "Scoop: Schumer seeks tech antitrust bill vote by early summer."
- 11 Emily Birnbaum and Leah Nylen, "Pelosi pledges to work with Republicans to pass tech antitrust bills," POLITICO Pro, March 18, 2022, available at <https://subscriber.politicopro.com/article/2022/03/pelosi-pledges-to-work-with-republicans-to-pass-tech-antitrust-bills-00018533>.
- 12 Leah Nylen and Adam Cancryn, "White House backs U.S. tech antitrust bills," POLITICO Pro, February 3, 2022, available at <https://subscriber.politicopro.com/article/2022/02/white-house-backs-tech-antitrust-bills-00005513>.
- 13 Peter S. Hyun, Acting Assistant Attorney General, "Letter: U.S. Department of Justice on Tech Antitrust Bills," U.S. Department of Justice, March 28, 2022, available at <https://s.wsj.net/public/resources/documents/DOJ%20on%20Tech%20Antitrust%20Bills.pdf>.
- 14 Jennifer Jacobs and Anna Edgerton, "White House Weighs Support for Klobuchar's Tech Antitrust Bill," Bloomberg, January 18, 2022, available at <https://www.bloomberg.com/news/articles/2022-01-19/white-house-weighs-support-for-klobuchar-s-tech-antitrust-bill>.
- 15 Brian Fung, "Major tech antitrust bill gets backing of US Commerce Department," CNN Business, April 27, 2022, available at <https://www.cnn.com/2022/04/27/tech/commerce-antitrust-bill/index.html>.
- 16 United States Innovation and Competition Act of 2021, H.R. 4521, 117th Cong., 2nd sess. (February 17, 2022), available at <https://www.congress.gov/bill/117th-congress/senate-bill/2710/text/rs?q=%7B%22search%22%3A%5B%22s.2710%22%2C%22s.2710%22%5D%7D&r=1>.
- 17 Heather Boushey and Helen Knudsen, "The Importance of Competition for the American Economy," The White House, July 9, 2021, available at <https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/>; Marc Jarsulic, Ethan Gurwitz, and Andrew Schwartz, "Toward a Robust Competition Policy" (Washington: Center for American Progress, 2019), available at <https://www.americanprogress.org/article/toward-robust-competition-policy/>.
- 18 Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 19 Nadler and Cicilline, "Investigation of Competition in Digital Markets"; Chicago Booth Stigler Committee on Digital Platforms, "Final Report" (Chicago: 2019), available at <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>; Matt Krantz, "13 Firms Hoard \$1 Trillion In Cash (We're Looking At You Big Tech)," Investor's Business Daily, February 3, 2022, available at <https://www.investors.com/etfs-and-funds/sectors/sp500-companies-stockpile-1-trillion-cash-investors-want-it/>.
- 20 American Innovation and Choice Online Act of 2022; Open App Markets Act of 2022.
- 21 American Innovation and Choice Online Act of 2022, Section 3 "UNLAWFUL CONDUCT."
- 22 Sai Krishna Kamepalli, Raghuram G. Rajan, and Luigi Zingales, "Kill Zone," SSRN, February 15, 2021, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3555915; Elizabeth Dwoskin, "Facebook's willingness to copy rivals' apps seen as hurting innovation," *The Washington Post*, August 10, 2017, available at https://www.washingtonpost.com/business/economy/facebooks-willingness-to-copy-rivals-apps-seen-as-hurting-innovation/2017/08/10/ea7188ea-7df6-11e7-a669-b400c5c7e1cc_story.html.

- 23 American Innovation and Choice Online Act of 2022, Section 3 "UNLAWFUL CONDUCT."
- 24 Adrienne Jeffries and Leon Yin, "Amazon Puts Its Own 'Brands' First Above Better-Rated Products," *The Markup*, October 14, 2021, available at <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>; Adrienne Jeffries and Leon Yin, "Google's Top Search Result? Surprise! It's Google," *The Markup*, July 28, 2020, available at <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>.
- 25 American Innovation and Choice Online Act of 2022, Section 2(5) "COVERED PLATFORM."
- 26 Tom Romanoff, "The American Innovation and Choice Online Act: What it Does and What it Means," Bipartisan Policy Center, January 20, 2022, available at <https://bipartisanpolicy.org/explainer/s2992/>; Sen. Chuck Grassley, "Statement at Markup on Big Tech Competition Bill," U.S. Senate Judiciary Committee, January 20, 2022, available at <https://www.judiciary.senate.gov/01/20/2022/grassley-statement-at-markup-on-big-tech-competition-bill>.
- 27 Open App Markets Act of 2022, Section 2(3) "COVERED COMPANY."
- 28 Open App Markets Act of 2022, Section 3(d) "INTEROPERABILITY."
- 29 Open App Markets Act of 2022, Section 3(a)(1).
- 30 Open App Markets Act of 2022, Section 3(d)(2).
- 31 Open App Markets Act of 2022, Section 3(a)(2) and Section 3(a)(3).
- 32 Open App Markets Act of 2022, Section 3(b) "INTERFERE WITH LEGITIMATE BUSINESS COMMUNICATIONS."
- 33 Open App Markets Act of 2022, Section 2(3) "COVERED COMPANY."
- 34 Rebecca Klar, "Microsoft announces new rules for app stores," *The Hill*, February 9, 2022, available at <https://thehill.com/policy/technology/593540-microsoft-announces-new-rules-for-app-stores/>.
- 35 Open App Markets Act of 2022, Section 3(b) "INTERFERE WITH LEGITIMATE BUSINESS COMMUNICATIONS."
- 36 Reuters, "South Korea approves rules on app store targeting Apple, Google," March 8, 2022, available at <https://www.reuters.com/technology/skorea-approves-rules-app-store-law-targeting-apple-google-2022-03-08/>; Shira Ovide, "Why Apple's Fight in the Netherlands Matters," *The New York Times*, February 22, 2022, available at <https://www.nytimes.com/2022/02/22/technology/apple-netherlands-app-store.html>.
- 37 Sumit Sharma and George P. Slover, "Letter Re: Committee hearing on S.2710 – Open App Markets Act," Consumer Reports, February 1, 2022, available at https://advocacy.consumerreports.org/wp-content/uploads/2022/02/CR-Letter-for-Senate-Judiciary-Committee-in-support-of-S2710-Open-App-Markets-Act_01-Feb-2022.pdf.
- 38 Open App Markets Act of 2022, Section 3(d) "INTEROPERABILITY."
- 39 Open App Markets Act of 2022, Section 3(a) "EXCLUSIVITY AND TYING"; American Innovation and Choice Online Act of 2022, Section 3(a)(5).
- 40 Open App Markets Act of 2022, Section 3(a)(1).
- 41 Stacy Mitchell, "Amazon's Toll Road: How the Tech Giant Funds Its Monopoly Empire by Exploiting Small Businesses" (Washington: Institute for Local Self-Reliance, 2021), available at <https://cdn.ilsr.org/wp-content/uploads/2021/11/LSR-AmazonTollRoad-Final.pdf>.
- 42 American Innovation and Choice Online Act of 2022, Section 3(a)(5).
- 43 Farhad Manjoo, "The Apple Tax Is Rotten," *The New York Times*, May 26, 2021, available at <https://www.nytimes.com/2021/05/26/opinion/apple-app-store-fortnite-lawsuit.html>.
- 44 Open App Markets Act of 2022, Section 3(a)(1); American Innovation and Choice Online Act of 2022, Section 3(a)(5).
- 45 American Innovation and Choice Online Act of 2022, Section 3(a)(1), Section 3(a)(2), Section 3(a)(5), Section 3(a)(9); Open App Markets Act of 2022, Section 3(d)(1).
- 46 American Innovation and Choice Online Act of 2022, Section 3(a)(8); Open App Markets Act of 2022, Section 3(d)(3).
- 47 Apple, "App Store Review Guidelines," available at <https://developer.apple.com/app-store/review/guidelines/#other-purchase-methods> (last accessed May 2022).
- 48 Open App Markets Act of 2022, Section 3(b) "INTERFERE WITH LEGITIMATE BUSINESS COMMUNICATIONS."
- 49 Open App Markets Act of 2022, Section 3(a)(1), Section 3(d)(1), Section 3(d)(2).
- 50 Bobby Allyn, "What The Ruling In The Epic Games V. Apple Lawsuit Means For iPhone Users," NPR, September 10, 2021, available at <https://www.npr.org/2021/09/10/1036043886/apple-fortnite-epic-games-ruling-explained>; Adi Roberston, "A Comprehensive Breakdown of the Epic v. Apple Ruling," *The Verge*, September 12, 2021, available at <https://www.theverge.com/2021/9/12/22667694/epic-v-apple-trial-fortnite-judge-yvonne-gonzalez-rogers-final-ruling-injunction-breakdown>; Russell Brandom, "Epic pushes to overturn App Store ruling in opening appeal brief," *The Verge*, January 20, 2022, available at <https://www.theverge.com/2022/1/20/22893546/epic-apple-fortnite-appeal-app-store-restrictions>; Ian Sherr, "In Appeal, Apple Argues Epic 'Failed to Prove' Facts of Fortnite Lawsuit," *CNET*, March 24, 2022, available at <https://www.cnet.com/tech/mobile/in-appeal-apple-argues-epic-failed-to-prove-facts-of-fortnite-lawsuit/>.
- 51 Ana Diaz, "Apple might have scared one of the biggest gaming companies in the world," *Polygon*, May 18, 2021, available at <https://www.polygon.com/22440737/roblox-metaverse-game-experiences-apple-epic-trial>; Josh Sisco, "Apple's Treatment of Roblox in Spotlight in DOJ Antitrust Probe," *The Information*, December 6, 2021, available at <https://www.theinformation.com/articles/apples-treatment-of-roblox-in-spotlight-in-doj-antitrust-probe>; Reuters, "Roblox backs Apple in antitrust case, says App Store offers privacy and security," April 1, 2022, available at <https://www.reuters.com/business/roblox-backs-apple-antitrust-case-says-app-store-offers-privacy-security-2022-04-01/>.

- 52 Sean Hollister, "Sony was bringing PlayStation Now to mobile phones, according to a confidential Apple presentation," *The Verge*, December 10, 2021, available at <https://www.theverge.com/22828526/sony-playstation-ps-now-cloud-gaming-mobile-apple-epic>; Richard Lawler and Sean Hollister, "Now you can play Fortnite on your iPhone or Android for free with Xbox Cloud Gaming," *The Verge*, May 5, 2022, available at <https://www.theverge.com/2022/5/5/23058642/fortnite-xbox-cloud-gaming-free-streaming-epic-games-microsoft>.
- 53 Tim Wu, "Taking Innovation Seriously: Antitrust Enforcement if Innovation Mattered Most," *Antitrust Law Journal* 78 (2012): 313, available at https://scholarship.law.columbia.edu/faculty_scholarship/1767/.
- 54 Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 55 Mitchell, "Amazon's Toll Road: How the Tech Giant Funds Its Monopoly Empire by Exploiting Small Businesses."
- 56 Antoine Prince Albert III, "Movin' On Up A Little Higher, Part 1: Starting to 'Get Up Offa That Thang' with Interoperability" (Washington: Public Knowledge, 2022), available at <https://publicknowledge.org/movin-on-up-a-little-higher-part-1-starting-to-get-up-offa-that-thang-with-interoperability/>.
- 57 Open App Markets Act of 2022, Section 3(e) "SELF-PREFENCING IN SEARCH"; American Innovation and Choice Online Act of 2022, Section 3(a)(1), Section 3(a)(2), Section 3(a)(5), Section 3(a)(9).
- 58 American Innovation and Choice Online Act of 2022, Section 3(a)(7).
- 59 Open App Markets Act of 2022, Section 3(b) "INTERFERE WITH LEGITIMATE BUSINESS COMMUNICATIONS."
- 60 Open App Markets Act of 2022, Section 3(c) "NONPUBLIC BUSINESS INFORMATION"; American Innovation and Choice Online Act of 2022, Section 3(a)(6).
- 61 American Innovation and Choice Online Act of 2022, Section 3(a)(5).
- 62 Open App Markets Act of 2022, Section 3(a)(1).
- 63 Open App Markets Act of 2022, Section 3 "PROTECTING A COMPETITIVE APP MARKET"; American Innovation and Choice Online Act of 2022, Section 3 "UNLAWFUL CONDUCT."
- 64 Chris Welch, "Apple TV app on Android TV no longer allows rentals, purchases, or subscriptions," *The Verge*, March 21, 2022, available at <https://www.theverge.com/2022/3/21/22988846/apple-tv-app-android-google-rentals-purchases>; nilay patel, @reckless, March 21, 2022, 10:56 a.m. ET, Twitter, available at <https://twitter.com/reckless/status/1505921403022893065?s=20&t=WVgar-DCASWhCYJQS9GYQ>.
- 65 Klar, "Microsoft announces new rules for app stores"; Brad Smith, @BradSmi, February 3, 2022, 7:23 p.m. ET, Twitter, available at <https://twitter.com/BradSmi/status/1489395484808466438>.
- 66 John Gruber, "Amazon and Apple Strike Deal for Prime Video In-App Purchases and Subscriptions," *Daring Fireball*, April 2, 2020, available at https://daringfireball.net/2020/04/amazon_apple_prime_video.
- 67 Kif Leswing, "Google will allow Spotify to offer its own billing on Android," *CNBC*, March 23, 2022, available at <https://www.cnbc.com/2022/03/23/google-will-allow-spotify-to-offer-its-own-billing-on-android.html>.
- 68 Apple, "App Store Review Guidelines"; Apple, "App Store Review Guidelines updates now available," available at <https://developer.apple.com/news/?id=4m3f5hbw> (last accessed October 2021).
- 69 Open App Markets Act of 2022, Section 3(b) "INTERFERE WITH LEGITIMATE BUSINESS COMMUNICATIONS."
- 70 Reuters, "South Korea approves rules on app store targeting Apple, Google"; Ovide, "Why Apple's Fight in the Netherlands Matters."
- 71 European Commission, "The Digital Markets Act: ensuring fair and open digital markets," available at https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en (last accessed May 2022); European Commission, "The Digital Services Act package," available at <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> (last accessed May 2022).
- 72 Open App Markets Act of 2022, Section 3(a)(1); American Innovation and Choice Online Act of 2022, Section 3(a)(5).
- 73 European Commission, "The Digital Markets Act: ensuring fair and open digital markets"; European Commission, "The Digital Services Act package."
- 74 Adam Satariano, "E.U. Takes Aim at Social Media's Harms With Landmark New Law," *The New York Times*, April 22, 2022, available at <https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html>; Adam Satariano, "E.U. Takes Aim at Big Tech's Power With Landmark Digital Act," *The New York Times*, March 24, 2022, available at <https://www.nytimes.com/2022/03/24/technology/eu-regulation-apple-meta-google.html>.
- 75 American Innovation and Choice Online Act of 2022, Section 4 "ENFORCEMENT GUIDELINES."
- 76 Rob Pegoraro, "Senators Update Antitrust Bill to Focus More Narrowly on Big Tech Firms," *PCMag*, May 26, 2022, available at <https://www.pcmag.com/news/senators-update-antitrust-bill-to-focus-more-narrowly-on-big-tech-firms>.
- 77 American Innovation and Choice Online Act of 2022, Section 2(a)(5) "COVERED PLATFORM."
- 78 Computer & Communications Industry Association, "Analysis of the American Innovation and Choice Online Act (AICOA): Putting the Brakes on Innovation" (Washington), available at https://www.cciainet.org/wp-content/uploads/2021/10/Analysis-of-the-American-Innovation-and-Choice-Online-Act-AICOA_-Putting-the-Brakes-on-Innovation.pdf (last accessed May 2022); U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective" (Washington: 2022), available at <https://www.uschamber.com/assets/documents/U.S.-ANTITRUST-LEGISLATIVE-PROPOSALS-A-GLOBAL-PERSPECTIVE-FINAL-LOCKED-2.16.22.pdf>.
- 79 American Innovation and Choice Online Act of 2022, Section 2(a)(5) "COVERED PLATFORM."

- 80 U.S. Senate Committee on the Judiciary, Subcommittee on Competition Policy, Antitrust, and Consumer Rights, "Antitrust Applied: Examining Competition in App Stores: Subcommittee Hearing," April 21, 2021, available at <https://www.judiciary.senate.gov/meetings/antitrust-applied-examining-competition-in-app-stores>; U.S. Senate Committee on the Judiciary, Subcommittee on Competition Policy, Antitrust, and Consumer Rights, "Protecting Competition and Innovation in Home Technologies: Subcommittee Hearing," June 15, 2021, available at <https://www.judiciary.senate.gov/meetings/protecting-competition-and-innovation-in-home-technologies>; U.S. Senate Committee, Subcommittee on Competition Policy, Antitrust, and Consumer Rights, "Big Data, Big Questions: Implications for Competition and Consumers: Subcommittee Hearing," September 21, 2021, available at <https://www.judiciary.senate.gov/meetings/big-data-big-questions-implications-for-competition-and-consumers>; U.S. Senate Committee on the Judiciary, Subcommittee on Competition Policy, Antitrust, and Consumer Rights, "The Impact of Consolidation and Monopoly Power on American Innovation: Subcommittee Hearing," December 15, 2021, available at <https://www.judiciary.senate.gov/meetings/the-impact-of-consolidation-and-monopoly-power-on-american-innovation>.
- 81 Nadler and Cicilline, "Investigation of Competition in Digital Markets."
- 82 Competition and Markets Authority, "Online platforms and digital advertising: Market study interim report" (London: 2019), available at https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf; Jacques Crémer, Yves-Alexandre de Montjoye, and Heike Schweitzer, "Competition policy for the digital era" (Brussels: European Commission, 2019), available at [kd0419345enn.pdf](https://ec.europa.eu/competition/antitrust/files/study_digital_era_en.pdf) (europa.eu); Australian Competition and Consumer Commission, "Digital Platforms Inquiry: Final Report" (Canberra, Australia: 2019), available at <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>; Federal Ministry for Economic Affairs and Energy, "Draft tenth act amending the Act against Restraints of Competition for a focused, proactive and digital competition law 4.0 (GWB Digitization Act) of 2020," (Berlin: 2020), available in German at https://www.bmwk.de/Redaktion/DE/Downloads/G/gwb-digitalisierungsgesetz-referentenentwurf.pdf?__blob=publicationFile&v=10.
- 83 Harold Feld, "The Case for the Digital Platforms Act: Breakups, Starfish Problems, & Tech Regulation" (Washington: Public Knowledge and the Roosevelt Institute, 2019), available at <https://www.digitalplatformact.com/>; Lina Khan, "The Separation of Platforms and Commerce," *Columbia Law Review* 119 (4) (2019), available at <https://columbialawreview.org/content/the-separation-of-platforms-and-commerce/>; Tom Wheeler, Phil Verveer, and Gene Kimmelman, "New Digital Realities; New Oversight Solutions" (Cambridge, MA: Harvard Kennedy School Shorenstein Center on Media, Politics, and Public Policy, 2020), available at https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities_August-2020.pdf; Fiona M. Scott Morton, "Reforming U.S. antitrust enforcement and competition policy" (Washington: Washington Center for Equitable Growth, 2020), available at <https://equitablegrowth.org/reforming-u-s-antitrust-enforcement-and-competition-policy/>; Gene Kimmelman, "The Right Way to Regulate Digital Platforms," Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy, September 18, 2019, available at <https://shorensteincenter.org/the-right-way-to-regulate-digital-platforms/>; K. Sabeel Rahman, "The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept," *Cardozo Law Review* 39 (5) (2018), available at <https://papers.ssrn.com/abstract=2986387>; Committee on Digital Platforms, "Final Report" (Chicago: University of Chicago Stigler Center for the Study of the Economy and the State, 2019), available at <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>; Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 84 American Innovation and Choice Online Act of 2022, Section 2(a)(5) "COVERED PLATFORM."
- 85 American Innovation and Choice Online Act of 2022, Section 2(a)(6) "CRITICAL TRADING PARTNER."
- 86 Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 87 Kashmir Hill, "I Cut the 'Big Five' Tech Giants From My Life. It Was Hell," *Gizmodo*, February 7, 2019, available at <https://gizmodo.com/i-cut-the-big-five-tech-giants-from-my-life-it-was-hel-1831304194>.
- 88 Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 89 American Innovation and Choice Online Act of 2022, Section 2(a)(5)(B)(ii)(II).
- 90 Mark MacCarthy, "Two ways to improve Senator Klobuchar's needed antitrust legislation," Brookings Institution, February 8, 2022, available at <https://www.brookings.edu/blog/techtank/2022/02/08/two-ways-to-improve-senator-klobuchars-needed-antitrust-legislation/>.
- 91 Ibid.
- 92 Samir Jain and others, Letter to Sens. Klobuchar and Grassley, Center for Democracy & Technology, March 9, 2022, available at <https://cdt.org/wp-content/uploads/2022/03/S2292-CDT-letter-3-9-22-FINAL.pdf>.
- 93 Open App Markets Act of 2022, Section 4 "PROTECTING THE SECURITY AND PRIVACY OF USERS"; American Innovation and Choice Online Act of 2022, Section 3(b) "AFFIRMATIVE DEFENSES."
- 94 American Innovation and Choice Online Act of 2022, Section 3(b)(1)(B).

- 95 Open App Markets Act of 2022, Section 4(b)(3); American Innovation and Choice Online Act of 2022, Section 3(b)(1).
- 96 Kent Walker, "The Harmful Consequences of Congress's Anti-Tech Bills," Google Keyword blog, January 18, 2022, available at <https://blog.google/outreach-initiatives/public-policy/the-harmful-consequences-of-congress-anti-tech-bills/>.
- 97 U.S. Senate Judiciary Committee, "Results of Executive Business Meeting," January 20, 2022, available at [https://www.judiciary.senate.gov/imo/media/doc/EBM Results 1.20.222.pdf](https://www.judiciary.senate.gov/imo/media/doc/EBM%20Results%2022.pdf).
- 98 Walker, "The Harmful Consequences of Congress's Anti-Tech Bills."
- 99 Ashley Gold, @ashleyrgold, May 26, 2022, 2:38 p.m. ET, Twitter, available at <https://twitter.com/ashleyrgold/status/1529894867303911424?s=20&t=JQPMjGMVEyB0wfKloNpPSA>.
- 100 American Innovation and Choice Online Act of 2022, Section 3(a)(1), Section 3(a)(2), Section 3(a)(3), Section 3(b)(2).
- 101 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective."
- 102 Timothy Powderly, Letter to Senate Judiciary Committee, Apple, January 18, 2022, available at <https://9to5mac.com/wp-content/uploads/sites/6/2022/01/Apple-letter-full.pdf>.
- 103 Ibid.
- 104 Jain and others, Letter to Sens. Klobuchar and Grassley.
- 105 Ibid.
- 106 Pegoraro, "Senators Update Antitrust Bill to Focus More Narrowly on Big Tech Firms."
- 107 American Innovation and Choice Online Act of 2022.
- 108 American Innovation and Choice Online Act of 2022, Section 3(c)(1).
- 109 American Innovation and Choice Online Act of 2022, Section 3(c)(4) "ENFORCEMENT IN FEDERAL DISTRICT COURT."
- 110 American Innovation and Choice Online Act of 2022, Section 4 "ENFORCEMENT GUIDELINES."
- 111 American Innovation and Choice Online Act of 2022, Section 2(b).
- 112 American Innovation and Choice Online Act of 2022, Section 3(a)(7).
- 113 American Innovation and Choice Online Act of 2022, Section 3(b)(1)(B).
- 114 Cat Zakrzewski, "Apple CEO Escalates Fight Over App Store Regulation in Rare D.C. Speech," *The Washington Post*, April 12, 2022, available at <https://www.washingtonpost.com/technology/2022/04/12/apple-ceo-tim-cook-app-store/>.
- 115 Powderly, Letter to Senate Judiciary Committee.
- 116 Nokia, "Banking Malware Threats Surging as Mobile Banking Increases—Nokia Threat Intelligence Report," Press release, November 8, 2021, available at <https://www.nokia.com/about-us/news/releases/2021/11/08/banking-malware-threats-surging-as-mobile-banking-increases-nokia-threat-intelligence-report/>.
- 117 Kif Leswing, "Apple's Head of Software Admits Macs Have An Unacceptable Amount of Malware," CNBC, May 19, 2021, available at <https://www.cnbc.com/2021/05/19/apples-head-of-software-says-current-level-of-mac-malware-is-not-acceptable.html>.
- 118 Bruce Schneier, "Letter From Bruce Schneier to Senate Judiciary Regarding App Store Security," Electronic Frontier Foundation, January 31, 2022, available at <https://www.eff.org/document/letter-bruce-schneier-senate-judiciary-regarding-app-store-security>.
- 119 Leadership Conference on Civil and Human Rights, "Support a Comprehensive Consumer Privacy Law that Safeguards Civil Rights Online," May 25, 2022, available at <https://civilrights.org/resource/support-a-comprehensive-consumer-privacy-law-that-safeguards-civil-rights-online/>.
- 120 American Edge Project, "AEP Releases New Ad: 'Change Course'," Press release, April 12, 2022, available at <https://americanedgeproject.org/aep-releases-new-ad-change-course/>; Heather Greenfield, "CIA Whitepaper Identifies National Security Risks Posed By House Bills Targeting U.S. Tech Companies," Computer & Communications Industry Association, Press release, September 13, 2021, available at <https://www.ccianet.org/2021/09/ccia-whitepaper-identifies-national-security-risks-posed-by-house-bills-targeting-u-s-tech-companies/>.
- 121 Nihal Krishan, "National Security Bigwigs Split Over Bills Targeting Amazon, Apple, and Google," *The Washington Examiner*, April 11, 2022, available at <https://www.washingtonexaminer.com/policy/national-security-bigwigs-split-over-bills-targeting-amazon-apple-and-google>.
- 122 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective"; Walker, "The Harmful Consequences of Congress's Anti-Tech Bills"; James R. Clapper and others, "Open Letter from Former Defense, Intelligence, Homeland Security, and Cyber Officials Calling for National Security Review of Congressional Tech Legislation," April 18, 2022, available at <https://punchbowl.news/wp-content/uploads/Open-Letter-Cyber-Intel-Defense-HS-1.pdf>.
- 123 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective."
- 124 Walker, "The Harmful Consequences of Congress's Anti-Tech Bills."
- 125 American Innovation and Choice Online Act of 2022, Section 3(a)(4).
- 126 Clapper and others, "Open Letter from Former Defense, Intelligence, Homeland Security, and Cyber Officials Calling for National Security Review of Congressional Tech Legislation."
- 127 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective."
- 128 American Innovation and Choice Online Act of 2022, Section 3(a)(7).
- 129 Congressman David Cicilline, "Cicilline Statement on Big Tech Markup," Press release, June 24, 2021, available at <https://cicilline.house.gov/press-release/cicilline-statement-big-tech-markup>.
- 130 American Choice and Innovation Online Act of 2021, H.R. 3816, 117th Cong., 1st sess. (June 24, 2021), available at <https://www.congress.gov/bill/117th-congress/house-bill/3816/text>.
- 131 American Innovation and Choice Online Act of 2022.

- 132 U.S. Senate Judiciary Committee, "Results of Executive Business Meeting"; Leah AntiTrustButVerify Nylan, @leah_nylen, January 20, 2022, 12:36 p.m. ET, Twitter, available at https://twitter.com/leah_nylen/status/1484218398552825865; U.S. Senate Committee on the Judiciary, "Results of Executive Business Meeting – January 20, 2022."
- 133 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(B)(ii), Section 2(a)(8), Section 3(a)(8)(B), Section 3(c)(8)(A)(v).
- 134 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(B).
- 135 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(A).
- 136 Clapper and others, "Open Letter from Former Defense, Intelligence, Homeland Security, and Cyber Officials Calling for National Security Review of Congressional Tech Legislation."
- 137 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(B).
- 138 American Innovation and Choice Online Act of 2022, Section 3(a)(4).
- 139 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(B)(ii).
- 140 American Innovation and Choice Online Act of 2022, Section 2(b).
- 141 American Innovation and Choice Online Act of 2022, Section 4(a).
- 142 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective"; Walker, "The Harmful Consequences of Congress's Anti-Tech Bills"; Clapper and others, "Open Letter from Former Defense, Intelligence, Homeland Security, and Cyber Officials Calling for National Security Review of Congressional Tech Legislation."
- 143 American Innovation and Choice Online Act of 2022, Section 2(a)(2)(B)(ii), Section 2(a)(8), Section 3(a)(8)(B), Section 3(c)(8)(A)(v).
- 144 American Innovation and Choice Online Act of 2022, Section 3(b) "AFFIRMATIVE DEFENSES."
- 145 American Innovation and Choice Online Act of 2022, Section 3(c)(1).
- 146 American Innovation and Choice Online Act of 2022, Section 3(c)(4) "ENFORCEMENT IN FEDERAL DISTRICT COURT."
- 147 Open App Markets Act of 2022, Section 7(6).
- 148 Open App Markets Act of 2022, Section 4(a)(1)(A).
- 149 Open App Markets Act of 2022, Section 5(b)(3).
- 150 U.S. Chamber of Commerce, "U.S. Antitrust Legislative Proposals: A Global Perspective."
- 151 Ganesh Sitaraman, "The National Security Case for Breaking Up Big Tech" (New York: Knight First Amendment Institute at Columbia University, 2020), available at <https://knightcolumbia.org/content/the-national-security-case-for-breaking-up-big-tech>.
- 152 Ernesto Falcon, "No, Tech Monopolies Don't Serve National Security," Electronic Frontier Foundation, September 16, 2021, available at <https://www.eff.org/deeplinks/2021/09/no-tech-monopolies-dont-serve-national-security>.
- 153 Ranjan Roy, "TikTok and Tariffs," Margins, May 10, 2019, available at <https://www.readmargins.com/p/tiktok-and-tariffs?s=r>.
- 154 Adam Conner, "TikTok, the Facebook Competitor?," Margins, July 24, 2020, available at <https://www.readmargins.com/p/tiktok-the-facebook-competitor?s=r>.
- 155 Abram Brown, "Facebook Knows It's Losing The Battle Against TikTok," *Forbes*, February 4, 2022, available at <https://www.forbes.com/sites/abrambrown/2022/02/04/facebook-meta-growth-zuckerberg-reels-tiktok-videos-creators-pay/?sh=b19d0314008e>; Caleb Ecarma, "Facebook's Playbook to Beat Competitors Has Had to Change With TikTok," *Vanity Fair*, March 30, 2022, available at <https://www.vanityfair.com/news/2022/03/facebook-competitors-change-tiktok>; Sarah Min, "How TikTok Overtook Facebook and Instagram to Become the Most Downloaded App on Planet," CBS News, May 10, 2019, available at <https://www.cbsnews.com/news/tiktoks-most-downloaded-app-beating-facebook-and-instagram-but-its-popularity-comes-with-data-privacy-concerns/>; Salvador Rodriguez, "Meta's Facebook Escalates TikTok Rivalry, Launches Reels Globally," *The Wall Street Journal*, February 22, 2022, available at <https://www.wsj.com/articles/metas-facebook-escalates-tiktok-rivalry-launches-reels-globally-11645549200>.
- 156 Anupam Chander and others, "Re: Committee Markup of S.2710, the Open App Markets Act (February 3, 2022)," Center for Democracy & Technology, February 2, 2022, available at <https://cdt.org/wp-content/uploads/2022/02/CDT-TechFreedom-Coalition-Letter-re-S2710-Content-Moderation.pdf>; Free Press, "Provision in Senate Antitrust Bill Would Undermine the Fight Against Online Hate and Disinformation," Press release, January 20, 2022, available at <https://www.freepress.net/news/press-releases/provision-senate-antitrust-bill-would-undermine-fight-against-online-hate-and-disinformation>.
- 157 American Innovation and Choice Online Act of 2022, Section 3(a)3.
- 158 American Innovation and Choice Online Act of 2022, Section 3(a)(3); Free Press, "Provision in Senate Antitrust Bill Would Undermine the Fight Against Online Hate and Disinformation"; Jain and others, Letter to Sens. Klobuchar and Grassley.
- 159 Alex Petros and Charlotte Slaiman, "Big Tech Competition Bills Don't Address Content Moderation, and That's A Good Thing," Public Knowledge, May 27, 2022, available at <https://publicknowledge.org/big-tech-competition-bills-dont-address-content-moderation-and-thats-a-good-thing/>.
- 160 American Innovation and Choice Online Act of 2022, Section 3(c) "ENFORCEMENT."
- 161 American Innovation and Choice Online Act of 2022, Section 3(c)(4) "ENFORCEMENT IN FEDERAL DISTRICT COURT."
- 162 American Innovation and Choice Online Act of 2022, Section 3(a)(3).
- 163 American Innovation and Choice Online Act of 2022, Section 3(a)(3).
- 164 American Innovation and Choice Online Act of 2022, Section 3(b)(1)(B).
- 165 Casey Newton, "YouTube Deletes Alex Jones' Channel For Violating Its Community Guidelines," *The Verge*, August 6, 2018, available at <https://www.theverge.com/2018/8/6/17656708/youtube-alex-jones-infowars-account-deleted-facebook-apple-spotify>.

- 166 *The Guardian*, "Alex Jones Liable For Damages Over Sandy Hook Shooting Claims, Judge Rules," November 15, 2021, available at <https://www.theguardian.com/us-news/2021/nov/15/alex-jones-liable-damages-sandy-hook-school-shooting-connecticut>; Sarah Overmohle, "FDA Warns Alex Jones Over False Coronavirus Claims," Politico, April 9, 2020, available at <https://www.politico.com/news/2020/04/09/fda-warns-alex-jones-over-false-coronavirus-claims-178629>.
- 167 Kevin Breuninger, "Biden's Covid vaccine mandate will likely go to the Supreme Court. Here's how the courts have ruled before," CNBC, November 18, 2021, available at <https://www.cnbc.com/2021/11/18/bidens-vaccine-mandate-will-likely-go-to-the-supreme-court-heres-how-the-courts-have-ruled-before.html>; Richard Lempert, "The vaccine mandate cases, polarization, and jurisprudential norms," Brookings Institution, January 15, 2022, available at <https://www.brookings.edu/blog/fixgov/2022/01/15/the-vaccine-mandate-cases-polarization-and-jurisprudential-norms/>.
- 168 Aaron Schur, "Congress Should Get Moving On Tech Competition While It Has the Chance," Protocol, April 5, 2022, available at <https://www.protocol.com/policy/yelp-opinion-innovation-choice-act>.
- 169 Chander and others, "Letter Re: Committee Markup of S.2710, the Open App Markets Act (February 3, 2022)"; Open App Markets Act of 2022, Section 3(e).
- 170 Open App Markets Act of 2022, Section 3(3)(1).
- 171 Berin Szoka and others, "Letter Re: S.2992, the American Choice and Innovation Online Act; and S.2710, the Open App Markets Act (January 19, 2022)," Tech Freedom, January 19, 2022, available at <https://techfreedom.org/wp-content/uploads/2022/01/Letter-Senate-Antitrust-Bills-for-Markup-1.2022-FINAL.pdf>.
- 172 Tom Romanoff, "Analyzing the Open App Markets Act," Bipartisan Policy Center, February 2, 2022, available at <https://bipartisanpolicy.org/explainer/analyzing-the-open-app-markets-act/?msclkid=b9155990bcfc11ecabf9efd88ea43a2c>.
- 173 Open App Markets Act of 2022, Section 5(a).
- 174 Open App Markets Act of 2022, Section 5(b)(1).
- 175 Szoka and others, "Letter Re: S.2992, the American Choice and Innovation Online Act; and S.2710, the Open App Markets Act (January 19, 2022)."
- 176 Social Media Platforms of 2021, S.B. 7072, Florida State Legislature, 2021 sess. (May 25, 2021), available at <https://www.flsenate.gov/Session/Bill/2021/7072/ByCategory/?Tab=BillHistory>; H.B. 20, Texas State Legislature, sess. 87(2) (September 9, 2021), available at <https://capitol.texas.gov/Bill-Lookup/History.aspx?LegSess=872&Bill=HB20>.
- 177 Mark Joseph Stern, "The 5th Circuit's Reinstatement of Texas' Internet Censorship Law Could Break Social Media," Slate, May 12, 2022, available at <https://slate.com/technology/2022/05/texas-internet-censorship-social-media-first-amendment-fifth-circuit.html>; Cat Zakrzewski, "11th Circuit blocks major provisions of Florida's social media law," *The Washington Post*, May 23, 2022, available at <https://www.washingtonpost.com/technology/2022/05/23/florida-social-media-11th-circuit-decision/>; *NetChoice, LLC, dba NetChoice, et al., Applicants v. Ken Paxton, Attorney General of Texas*, No. 21-51178 (May 13, 2022), available at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a720.html>; TechFreedom, @TechFreedom, May 23, 2022, 3:07 p.m. ET, Twitter, available at <https://twitter.com/TechFreedom/status/1528814806119104512?s=20&t=ZFeX4GUoXNFgkGD19zwQ>.
- 178 Chander and others, "Re: Committee Markup of S.2710, the Open App Markets Act (February 3, 2022)"; Szoka and others, "Letter Re: S.2992, the American Choice and Innovation Online Act; and S.2710, the Open App Markets Act (January 19, 2022)."
- 179 Free Press, "Provision in Senate Antitrust Bill Would Undermine the Fight Against Online Hate and Disinformation."
- 180 Henry Fernandez, "Curbing Hate Online: What Companies Should Do Now" (Washington: Center for American Progress, 2018), available at <https://www.americanprogress.org/article/curbing-hate-online-companies-now/>.
- 181 Center for American Progress, "RELEASE: Advocates, Elected Officials Demand Facebook Address Spanish-Language Disinformation Crisis, Release Action Plan and Demands Ahead of Hearings," Press release, March 16, 2021, available at <https://www.americanprogress.org/press/release-advocates-elected-officials-demand-facebook-address-spanish-language-disinformation-crisis-release-action-plan-demands-ahead-hearings/>.
- 182 Meta Business Help Center, "About Brand Safety on Facebook, Instagram, WhatsApp and Audience Network," available at <https://www.facebook.com/business/help/1559334364175848?id=1769156093197771> (last accessed May 2022); Debbie Weinstein, "YouTube achieves MRC brand safety milestone," Google Ads & Commerce Blog, February 9, 2021, available at <https://blog.google/products/ads-commerce/mrc-youtube-brand-safety/>.
- 183 Stop Hate for Profit, "Demand Facebook Stop Hate for Profit," available at <https://www.stophateforprofit.org/demand-change> (last accessed May 2022).
- 184 Nick Clegg, "Facebook Does Not Benefit from Hate," Meta, July 1, 2020, available at <https://about.fb.com/news/2020/07/facebook-does-not-benefit-from-hate/>.
- 185 Chander and others, "Re: Committee Markup of S.2710, the Open App Markets Act (February 3, 2022)."

- 186 Jay Peters and Kim Lyons, "Apple Removes Parler From the App Store," *The Verge*, January 9, 2021, available at <https://www.theverge.com/2021/1/9/22221730/apple-removes-suspends-bans-parler-app-store>; Kif Leswing, "Google Removes Parler, Popular With Trump Supporters, From App Store For Android," *CNBC*, January 8, 2021, available at <https://www.cnbc.com/2021/01/08/google-removes-parler-app-from-google-play-store.html>; Rebecca Klar and Chris Mills Rodrigo, "Parler's return to Apple store poses new challenges," *The Hill*, May 17, 2022, available at <https://thehill.com/policy/technology/553959-parlers-return-to-apple-store-poses-new-challenges/>.
- 187 Isaac Saul, "This Twitter Alternative Was Supposed To Be Nicer, But Bigots Love It Already," *The Forward Association*, July 18, 2019, available at <https://forward.com/news/427705/parler-news-white-supremacist-islamophobia-laura-loomer/>; Anti-Defamation League, "Parler: Where the Mainstream Mingles with the Extreme," November 12, 2020, available at <https://www.adl.org/blog/parler-where-the-mainstream-mingles-with-the-extreme>; BBC, "Parler 'free speech' app tops charts in wake of Trump defeat," November 9, 2020, available at <https://www.bbc.com/news/technology-54873800>; Jason Murdock, "Who Own Parler? Social Media Platform Offers Safe Space for the Far Right," *Newsweek*, June 25, 2020, available at <https://www.newsweek.com/parler-social-media-facebook-twitter-far-right-trump-supporters-john-matze-jared-thomson-1513378>; Kate Cox, "Parler: We warned the FBI more than 50 times before the Capitol riot," *Ars Technica*, March 29, 2021, available at <https://arstechnica.com/tech-policy/2021/03/parler-we-warned-the-fbi-more-than-50-times-before-the-capitol-riot/>; Justin Hendrix, "Facebook Provided Warning to FBI Before January 6, GAO Report Reveals," *Just Security*, May 5, 2022, available at <https://www.justsecurity.org/81384/facebook-provided-warning-to-fbi-before-january-6-gao-report-reveals/>.
- 188 Klar and Rodrigo, "Parler's return to Apple store poses new challenges."
- 189 Apple, "App Store stopped more than \$1.5 billion in potentially fraudulent transactions in 2020," May 11, 2021, available at <https://www.apple.com/newsroom/2021/05/app-store-stopped-over-1-5-billion-in-suspect-transactions-in-2020/> (last accessed May 2022).
- 190 Apple, "Parler on the App Store," available at <https://apps.apple.com/us/app/parler/id1402727988> (last accessed May 2022).
- 191 Adam Kovacevich, @adamkovac, May 25, 2022, 10:37 p.m. ET, Twitter, available at <https://twitter.com/adamkovac/status/1529652942252408832?s=20&t=RmrLrhCbrNyGE1Za7LlyWg>.
- 192 Erin Simpson and Adam Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services" (Washington: Center for American Progress, 2021), available at <https://www.americanprogress.org/article/how-to-regulate-tech-a-technology-policy-framework-for-online-services/>.
- 193 Jerrold Nadler and David N. Cicilline, "Investigation of Competition in Digital Markets" (Washington: House Subcommittee on Antitrust, Commercial and Administrative Law, 2020), available at https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519; Marc Jarsulic, "Using Antitrust Law to Address the Market Power of Platform Monopolies" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/article/using-antitrust-law-address-market-power-platform-monopolies/>.
- 194 Jarsulic, "Using Antitrust Law To Address the Market Power of Platform Monopolies"; Simpson and Conner, "How To Regulate Tech: A Technology Policy Framework for Online Services."
- 195 Jarsulic, "Using Antitrust Law To Address the Market Power of Platform Monopolies."



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