

Testimony of:

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"Europe's Threat to Speech and Innovation"

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INTRODUCTION

Chairman Jordan, Ranking Member Raskin, and esteemed members of the Committee, I'm honored to have the opportunity to submit this written testimony. My name is Joseph Coniglio and I am the Director of Antitrust and Innovation Policy and the Schumpeter Project for Competition Policy at the Information Technology and Innovation Foundation. I've worked on antitrust issues in high-tech markets for over a decade, first in government, then as an attorney in private practice, and now in public policy. I have written numerous pieces, spoken widely, and been quoted in leading publications on the application of antitrust law to high-tech industries, as well as the need for policies which foster the innovation that is critical to drive economic growth and U.S. techno-economic leadership.

ABOUT ITIF

Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute that has been recognized repeatedly as the world's leading think tank for science and technology policy. ITIF focuses on a host of critical issues at the intersection of technological innovation and public policy—including economic issues related to innovation, productivity, and competitiveness; technology issues in the areas of information technology and data, broadband telecommunications, advanced manufacturing, life sciences, and clean energy; and overarching policy tools related to public investment, regulation, antitrust, taxes, and trade. ITIF's goal is to provide policymakers with high-quality information, analysis, and actionable recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, original thinking, policy pragmatism, and editorial independence.

A TIDAL WAVE FROM ACROSS THE POND: HARMFUL EU AND UK REGULATIONS TARGET U.S. TECH

There are four key problems with regimes like Europe's Digital Markets Act ("DMA") and Digital Services Act ("DSA"), as well as the UK's Digital Markets Competition and Consumers Act ("DMCCA") and Online Safety Act ("OSA") from the standpoint of harming free speech and innovation: their apparent discrimination against leading U.S. tech firms, clear chilling effects on innovation and the liberties that underlie a culture of freedom, the encouragement of copycat regulations around the world, and an undermining of the West's competitiveness against China.

First, while these regulations may not be motivated entirely by an express anti-American animus, they remain discriminatory both with respect to their effects and, in some cases, intent. Most tellingly, the EU's DMA applies to just seven companies, five of which are American (Alphabet, Amazon, Apple, Meta, and Microsoft). This outcome was not coincidental: during the legislative process, Andreas Schwab, the European Parliament's rapporteur for the DMA, reportedly stated the regulation should focus on the top five U.S. companies and explicitly rejected suggestions to include European firms, dismissing such proposals as attempts to please the United States.[1] The UK's DMCC takes a parallel approach by employing revenue

[1] Lilla Nóra Kiss, "Does the DMA Intentionally Target US Companies?," ITIF (March 21, 2025), https://itif.org/publications/2025/03/21/does-the-dma-intentionally-target-us-companies/.

thresholds that also appear calibrated to capture large American technology firms. Indeed, the only firms designated under the Act so far have been Alphabet and Apple.

Despite having a broader application, ITIF has made clear that the DSA follows a similar pattern through tailored categorizations like "Very Large Online Platform" and "Very Large Online Search Engine" which overwhelmingly target U.S. technology companies and trigger particularly extensive content moderation obligations, transparency requirements, and potential fines.[2] The UK's OSA compounds these transatlantic burdens by imposing analogous heightened obligations on firms with especially high numbers of users—here again, disproportionately American digital firms.[3]

Second, regimes like the DMA and DMCCA are flawed attempts to govern *ex ante* highly dynamic and vibrant digital markets that are not in need of regulation. To be sure, not only are these regulations saddling American firms with heavy compliance costs, but they are already harming consumers and stifling innovative and other procompetitive behavior. For example, the DMA's prohibition on self-preferencing has forced Google to restructure the integration between its Search and Maps products in ways that reduce functionality for consumers while benefiting its online intermediary competitors.[4] What's more, the EU is using the DMA's interoperability requirements as a Trojan Horse to breach Apple's highly successful "walled garden" business model by mandating a series of data and technology transfers that will stifle incentives to innovate and harm user privacy and security.[5] And, with Meta, the European Union seeks to effectively micromanage how the company prices its products without any real pretense of protecting competition.

As the economist Joseph Schumpeter recognized, innovation is not just an economic process but requires a particular set of social and cultural values to flourish. Specifically, the "gales of creative destruction" that drive economic progress depend upon an "entrepreneurial spirit," which is itself sustained by a culture that values the creativity and dynamism enabled by the free exchange of ideas—all foundational to the Western ethos. Heavy-handed speech regulations are anathema to this vision, not least when the privacy and data security of American consumers may be put at risk due to efforts by U.S. technology companies to comply with strictures of foreign regimes like the DSA and OSA. As Federal Trade Commission Chairman Andrew Ferguson has recently warned:

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[2] *See* Information Technology and Innovation Foundation, "The EU's Content Moderation Regulation," ITIF (last updated August 26, 2025), https://itif.org/publications/2025/05/14/eu-content-moderation-regulation/.

[3] *See* Information Technology and Innovation Foundation, "The UK's Online Safety Act," ITIF (last updated August 26, 2025), https://itif.org/publications/2025/06/09/uk-online-safety-act/.

[4] Hadi Houalla, "The EU's DMA Investigations Place Innovation Under Microscope," ITIF (May 28, 2024), https://itif.org/publications/2024/05/28/eu-dma-investigations-place-innovation-under-microscope/.

[5] Joseph V. Coniglio, "Comments to the European Commission Regarding Proposed Measures for Interoperability Between Apple iOS and Devices," ITIF (Jan. 17, 2025), https://itif.org/publications/2025/01/17/comments-european-commission-regarding-proposed-measures-interoperability-apple-ios-devices/.

"I am concerned that these actions by foreign powers to impose censorship and weaken end-to-end encryption will erode Americans' freedoms and subject them to myriad harms, such as surveillance by foreign governments and an increased risk of identity theft and fraud."[6]

Third, the DMA and the DMCCA have already extended well beyond their shores by becoming a global template for techno-protectionism. Dozens of jurisdictions are now implementing or developing copycat digital antitrust regulations, many with American technology companies set squarely in their sights.[7] Unfortunately, other U.S. allies are no exception to this trend. For example, Japan has recently passed and will soon begin to enforce a smartphone regulation that targets Apple and Google with a number of strict conduct requirements.[8] As another instance of the global push for *ex ante* digital governance, South Korea continues to consider platform regulations of its own, including a recent potential proposal aimed at regulating online platform intermediaries—in other words, a number of leading American technology companies.[9]

Speech regulations are no exception to this "Brussels Effect." It has become *en vogue* for countries around the world to require U.S. technology companies to restrict lawful speech on their platforms, threatening penalties for noncompliance that coerce these online services into censoring content. Indeed, as ITIF has found, the DSA's content moderation model has spread globally, with Australia, India, Indonesia, and Turkey implementing similar laws requiring platforms to remove "harmful content" on tight deadlines.[10] While the specifics vary, they all seek to turn America's world class digital platforms into global speech police, undermining their ability to deliver safe and vibrant online services to their users.[11]

Fourth, this deluge of regulations risks creating an uneven playing field in the global techno-economic competition that will define the 21st century between America and China, who as ITIF has highlighted "was

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[6] Press Release, Fed. Trade Comm'n, "FTC Chairman Ferguson Warns Companies Against Censoring or Weakening the Data Security of Americans at the Behest of Foreign Powers," (Aug. 21, 2025). https://www.ftc.gov/news-events/news/press-releases/2025/08/ftc-chairman-ferguson-warns-companies-against-censoring-or-weakening-data-security-americans-behest.

[7] For an extensive study, see Joseph V. Coniglio et al, "A Policymaker's Guide to Digital Antitrust Regulation" (ITIF, March 31, 2025), https://itif.org/publications/2025/03/31/a-policymakers-guide-to-digital-antitrust-regulation/ ("[S]ome policymakers argue that the DMA has effectively become a global best practice for how to address competition issues in digital markets, as evidenced by similar efforts around the world, including jurisdictions such as Argentina, Australia, Brazil, Chile, Japan, Kenya, India, South Korea, Thailand, Turkey, the United Kingdom, and Uzbekistan").

[8] Joseph V. Coniglio, "Comments to Japan's Fair Trade Commission Regarding Draft Guidelines for the Mobile Software Competition Economy Act," ITIF (June 13, 2025), https://itif.org/publications/2025/06/13/comments-to-jftc-regarding-draft-guidelines-for-the-mobile-software-competition-economy-act/.

[9] See Lilla Nóra Kiss and Hilal Aka, "Korea's New Fairness Act Risks Chilling Innovation and Derailing Trade Talks," ITIF (July 24, 2025), https://itif.org/publications/2025/07/24/koreas-new-fairness-act-risks-chilling-innovation-and-derailing-trade-talks/.

[10] Hilal Aka, "The Global Spread of Protectionist Policies That Squeeze American Tech Companies,' ITIF (March 7, 2025), https://itif.org/publications/2025/03/07/the-global-spread-of-protectionist-policies-that-squeeze-american-tech-companies/.

[11] Ashley Johnson, "Restoring US Leadership on Digital Policy," ITIF (July 31, 2023), https://itif.org/publications/2023/07/31/restoring-us-leadership-on-digital-policy/.

the leading producer in seven of the ten strategically important industries… producing more than any other nation—and more than all other nations outside of the top 10 combined."[12] Specifically, a proliferation of regulations around the world that follow the DMA and DMCCA and disproportionately target U.S. firms while, for example, only capturing one Chinese digital giant (the DMA) or, so far, none at all (the DMCC), are bound to give Chinese platforms a competitive edge. This could take the form of Chinese rivals utilizing procompetitive integrations on mobile platforms that enhance user privacy and security which Apple and Google are forbidden from implementing due to regulation—an Orwellian result where consumers see CCP-linked Chinese tech platforms as better for their privacy and security than American ones.[13]

Speech regulations like the DSA and OSA are similarly poised to only further weaken the West in its global competition with China, including at an ideological level. As ITIF has noted:

In the first quarter of 2023, the Cyberspace Administration of China, the country's Internet regulator, shut down 4,200 websites, removed 55 apps from app stores, and ordered the administrators of 2,200 websites to rectify their content for offenses such as providing unauthorized news content and failing to stop the spread of "harmful content."[14]

Rather than reflect the values of free democracies, the imposition of heavy-handed speech regulations could be construed as a tacit admission that China's brave new totalitarian world—not Western ordered liberty—is the right model for political-economy for the 21st century.

Thank you for your consideration of my testimony.

[12] Robert D. Atkinson and Ian Tufts, "The Hamilton Index, 2023: China Is Running Away With the Global Economic Competition for Advanced Industries," ITIF (Dec. 13, 2023), https://itif.org/publications/2023/12/13/2023-hamilton-index/.

[13] See Remarks of Joseph V. Coniglio, "ECIPE Webinar: Cybersecurity at Risk – How the EU's Digital Markets Act Could Undermine Security Across Mobile Operating Systems," European Centre for International Political Economy (June 23, 2025), https://ecipe.org/events/ecipe-webinar-cybersecurity-at-risk/.

[14] Ashley Johnson, "Restoring US Leadership on Digital Policy," ITIF (July 31, 2023), https://itif.org/publications/2023/07/31/restoring-us-leadership-on-digital-policy/.