Transmitted via email.

June 11, 2026

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate

The Honorable Dick Durbin
Ranking Member
Committee on the Judiciary
United States Senate

RE: Opposition to the American Innovation and Choice Online Act (S.4746)

Dear Chairman Grassley and Ranking Member Durbin:

We, the undersigned organizations and individuals, write to urge Congress to reject the American Innovation and Choice Online Act (AICOA). The bill would impose heavy restrictions on the ability of America's leading digital platforms to engage in a wide array of common, overwhelmingly procompetitive behavior. Specifically, it emulates the European Union's (EU) Digital Markets Act (DMA), which disproportionately burdens U.S. tech leaders and has demonstrably harmed innovation, consumers, and businesses of all sizes—and thus risks undercutting U.S. efforts to stop the spread of these discriminatory policies abroad.

AICOA targets a small set of online platforms that meet specific revenue and user thresholds—without requiring any demonstration that they enjoy market power. It places limitations on these firms from undertaking a broad range of business practices that include self-preferencing, product integrations, refusals to deal with competitors, tying, the cross-use of data, and more. Affirmative defenses are crafted to be wholly inadequate. Indeed, for most of the specified practices the initial burden is on the defendant to prove the negative that it is not harming competition in any way.

There is no digital market failure that warrants this kind of sector-specific intervention. On the contrary, the ongoing innovation and dynamic competition driven by artificial intelligence (AI) prove that U.S. digital markets are thriving. What's more, and separate from the merits of the cases themselves, both the Department of Justice and Federal Trade Commission are engaged in extensive antitrust litigation with the majority of the firms that would likely be subject to this bill, with the government having achieved victories in two cases against Google—including one where extensive remedies have already been ordered. Simply put, there is no need for new and expansive antitrust legislation when there is no reason to think the existing antitrust framework isn't up to the task.

Not only is AICOA unnecessary to correct any digital market failures, but it is likely to have devastating consequences for innovation, consumers, and small tech firms. For example, with respect to the latter, small developers and startups often depend on integrated digital services for security, discovery, fraud prevention, payments, and global distribution because replicating

that infrastructure on their own is prohibitively expensive. By making ordinary product integration, differentiated terms, and platform management newly suspect, AICOA would raise costs, increase legal uncertainty, and make it harder for many firms to use the tools that allow them to challenge larger incumbents. The practical result would be fewer product improvements, slower deployment, and greater risk for the very businesses the bill presumably wants to help.

The risks are not hypothetical. By presumptively banning large swaths of digital behavior by firms without any demonstration that they enjoy market power, and leaving them with only a handful of narrow and largely unavailable defenses to justify their conduct, AICOA closely mirrors the conduct restrictions in the EU's DMA. But Europe's experience with the DMA shows what happens when an analysis that comprehensively weighs a practice's proven harms and benefits is replaced with presumptive prohibitions: DMA-style rules have weakened the ability of digital marketplaces to provide the trust, security, distribution, and bundled services that consumers and small businesses greatly rely on, as well as delayed access to new tools, degraded product features, and shifted costs onto smaller developers that lack the resources to navigate complex compliance regimes. Indeed, in AI and other disruptive technologies, those delays can hurt the most: recent survey research has found that EU and UK small technology firms lose an estimated $109,000 to $375,000 annually per firm from delayed AI model access and product launches, with directly affected firms losing $186,000 to $528,000. Nearly 60 percent of EU and UK developers reported launch delays tied to regulation, and more than one-third reported stripping or downgrading features to comply.[1] And of course, the burden on firms subject to the DMA is substantial: Overall, industry estimates suggest that the annual cost for an American "gatekeeper" to comply with the DMA is approximately $200 million.[2]

California—home to Silicon Valley and some of America's most innovative firms—is acting accordingly. In April, a California Senate committee declined to advance SB 1074, a state bill that closely tracks AICOA and places heavy restraints on generally procompetitive behavior like self-preferencing. California's policymakers concluded that the legislation would chill product development and even referenced the experience of the DMA as to how these types of rules can harm consumers and small businesses. Specifically, they highlighted how bans on self-preferencing in the case of Google's search integration with products like Google Maps can have the harmful and unintended effects of not just providing consumers with a worse user experience, but diverting traffic away from hotels and restaurants, many of which are small businesses, and into the hands of Google's large digital intermediary competitors.[3] Enacting AICOA would also undercut the bipartisan efforts of U.S. policymakers to push back against

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[1] ACT, *The Hidden Cost of AI Regulations: A Survey of EU, UK, and U.S. Companies* (Feb. 11, 2026), https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/.

[2] CCIA Research Center and LAMA Economic Research, *Costs to U.S. Companies from EU Digital Regulation* (March 2025), https://ccianet.org/wp-content/uploads/2025/03/CCIA_EU-Digital-Regulation-Factsheet_reportfinal.pdf.

[3] Chase DiFeliciantonio, *California's tech competition bill fails in committee*, POLITICOPRO (Apr. 21, 2026).

the growing and troubling trend of discriminatory digital regulations abroad.[4] Specifically, the Biden administration put pressure on the EU for the DMA's discriminatory targeting of American technology firms, with European Parliament rapporteur for the DMA, Andreas Schwab, reportedly saying that the EU should not "include a European gatekeeper to please Biden."[5] The Trump administration has taken these efforts to the next level by making clear that trading partners who impose discriminatory digital regulations like the DMA that disproportionately burden U.S. firms may be subject to investigations under Section 301 of the Trade Act of 1974.[6] But adopting a domestic AICOA regime would undermine this advocacy overnight: Foreign governments would point to AICOA as confirmation that the EU approach is accepted in America—accelerating the spread of similar measures and weakening the United States' negotiating leverage at exactly the moment it is being deployed.

For these reasons, Congress should reject AICOA. The competitive concerns the bill aims to address can be analyzed through the existing antitrust framework, which already provides authority to challenge anticompetitive conduct if it harms competition and consumers. What AICOA offers in its place is a heavy-handed regime that selects firms by size instead of market power, generally presumes conduct is harmful without proof, and replicates a foreign competition model the United States is otherwise working to contain. The result would be slower innovation at home, a stronger competitive position for state-backed rivals abroad, and a weaker hand for U.S. policymakers seeking to keep open digital markets the global norm. We respectfully ask the Committee to set the bill aside and work instead on approaches that promote competition without sacrificing the conditions that have made the U.S. technology sector the world's most innovative.

Respectfully,

COSIGNED

Joseph V. Coniglio, Senior Counsel and Director, Schumpeter Project on Competition Policy
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[4] *See, e.g.*, Joseph V. Coniglio et al., *A Policymaker's Guide to Digital Antitrust Regulation*, ITIF (Mar. 31, 2025), https://itif.org/publications/2025/03/31/a-policymakers-guide-to-digital-antitrust-regulation.

[5] *See* Testimony of Robert D. Atkinson, President, Information Technology and Innovation Foundation, Hearing on Protecting Innovation by Establishing and Enforcing Strong Digital Trade Rules (Sept. 20, 2024), https://waysandmeans.house.gov/wp-content/uploads/2024/09/2024-atkinson-testimony-digital-trade_shortened.pdf.

[6] Fact Sheet: President Donald J. Trump Issues Directive to Prevent the Unfair Exploitation of American Innovation, The White House (Feb. 21, 2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/.

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