

January 20, 2022

Senator Dick Durbin  
Chairman  
Committee on the Judiciary  
711 Hart Senate Office Bldg.  
Washington, D.C. 20510

Senator Charles Grassley  
Ranking Member  
Committee on the Judiciary  
135 Hart Senate Office Bldg.  
Washington, D.C. 20510

Senator Amy Klobuchar  
Chairwoman  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
425 Dirksen Senate Bldg.  
Washington, D.C. 20510

Senator Mike Lee  
Ranking Member  
Subcommittee on Competition Policy,  
Antitrust, and Consumer Rights  
361A Russell Senate Office Bldg.  
Washington, D.C. 20510

Chairman Durbin, Ranking Member Grassley, Chairwoman Klobuchar & Ranking Member Lee:

We write to you today in support of S. 2992, the American Innovation and Choice Online Act, a critical component of the broader tech accountability agenda. This bill would finally bring an end to anticompetitive discrimination and self-preferencing by Big Tech platforms, much to the benefit of American small businesses and consumers. For too long, Big Tech has been able to use their gatekeeper power to pick themselves as winners and potential competitors as losers in digital markets. S. 2992 will level the competitive playing field and seed the ground for the next generation of American technology success stories.

This bill is the natural outcome of years of work by the Senate Antitrust Subcommittee. It is part of a years-long project by legislators, enforcers, advocates, and experts to rein in Big Tech. Throughout the entire process, there have been robust opportunities for public interest advocates; the American small businesses that stand to gain from a level competitive playing field; and the Big Tech platforms themselves to offer input and revisions. 2021 alone saw the Senate Antitrust Subcommittee hold four separate hearings touching on self-preferencing topics (an innovation hearing in December; a data-focused hearing in September; a home technologies hearing in June; and an app store hearing in April). In fact, the Subcommittee held a hearing devoted to self-preferencing in March of 2020.

In the US House, the House Antitrust Subcommittee conducted a detailed two-year investigation into digital markets, culminating in a magisterial [450-page report](#) issued in October 2020. Hearings were conducted with academics across the political spectrum, small business owners, and even the Big Tech CEOs to provide them the opportunity to voice their concerns. The House

Judiciary Committee has already completed its markup, an all-day affair covering the gamut of concerns and potential amendments to the non-discrimination bill.

This laudable congressional effort did not develop in a vacuum, but was itself built upon years of reports of harms suffered by businesses reliant on Big Tech gatekeepers to reach their customers coupled with detailed research from academics across the globe. Key milestones include the issuance of the United Kingdom’s Competition and Market Authority’s [Digital Advertising Report](#) in January 2020; the [Stigler Report](#) in September 2019; the European Commission’s [Competition Policy for the Digital Era Report](#) in May 2019; the United Kingdom’s [Digital Competition Expert Panel Report](#) in March 2019; and the European Commission’s [Google Shopping decision](#) in June 2017. Today, the European Union is swiftly moving to modernize their digital platform regulations with the Digital Markets Act. The United States risks falling behind if equally swift action isn’t taken to pass bills like S. 2992.

The culmination of all this painstaking work is S. 2992, the American Innovation and Choice Online Act. This bill represents bipartisan compromise and Congress at its best—delivering results for its constituents.

While the current state of platform markets has been a boon for Big Tech, the same cannot be said for consumers. Right now, Big Tech platforms are making ranking decisions based on what links, products, or applications will make them the most money. This means that users are shown products using Amazon’s logistics service (along with its higher fees passed on to consumers) first, even if there are cheaper or faster alternatives available. Google Search results point you towards Google services while competitors are relegated further down the page and several clicks away.

It is important to note that the goal of S. 2992 is not to punish Big Tech or break services consumers find helpful. Under this bill, services and products that are the best for consumers—highest quality, lowest prices, etc.—can still be prioritized. Only now, consumers could use platforms with newfound confidence that they are set up to best serve their interests—not Big Tech’s. If Big Tech offerings really are the “best,” they have nothing to fear from this legislation.

Today, we risk losing the promise of the internet as a free and open medium for expression, communication, and learning. The world in which we are funneled through Big Tech’s increasingly narrow tunnels wasn’t inevitable. Instead, it developed over years of inaction by both Congress and antitrust enforcers. We made a choice to let Big Tech shut down competition, but now we can make a better choice, one that enables startups and small businesses to compete fairly in digital markets—and one that helps create better products and services for us all. Enforcers are now bringing strong cases to level the playing field in platform markets. It’s well past time for Congress to do its part by passing new rules of the road for Big Tech. The first step is to vote in favor of S. 2992—The American Innovation and Choice Online Act.



Sincerely,

/s/ Alex Petros

Alex Petros  
Policy Counsel  
Public Knowledge

/s/ Charlotte Slaiman

Charlotte Slaiman  
Competition Policy Director  
Public Knowledge