



March 18, 2021

Honorable Spencer Cox
Governor of Utah
The Office of Gov. Spencer J. Cox
350 N. State Street, Suite 200
P.O. Box 142220
Salt Lake City, UT 84114-2220

Governor Cox,

We write to urge you to veto Senate Bill 228, Electronic Free Speech Amendments. In addition to the many legal, constitutional, and free expression problems the bill would create, it also fails to understand how content moderation works across the entire ecosystem of companies that host user-generated content. As a non-profit that works with thousands of startups across the country, including in your state,¹ we worry about the impact this bill will have on competition and smaller, newer companies.

The national debate over content moderation has unfortunately gotten distracted by frustrations over First Amendment-protected decisions by large Internet companies. But the intermediary liability framework that empowers Internet companies to host and moderate user-generated content is critical for startups and their communities of users across the country, including in Utah, which has become a hub for entrepreneurial activity in recent years.² Changes to the frameworks that empower companies to host user-generated content will extend far beyond traditional social media services and to companies that create opportunities for photo-sharing, online dating, collaborative work, and more. And while the conversation may be dominated by concerns about Silicon Valley companies, there are startups in every corner of the country creating new and innovative opportunities for users to connect and share their ideas.

We do appreciate the attempts by the bill's authors to limit the impact the legislation would have on startups by including a size threshold. Unfortunately, the size threshold as determined by a

¹ See *#StartupsEverywhere: Salt Lake City, UT*, Engine (Feb. 21, 2020), <https://www.engine.is/news/startupseverywhere-salt-lake-city-utah> (Profile of Derek Omori, Director of Operations, Blerp); *#StartupsEverywhere: Salt Lake City, UT*, Engine (Nov. 22, 2019), <https://www.engine.is/news/startupseverywhere-salt-lake-city-ut> (Profile of Carter Pochynok, Founder, Mobius Audio); *#StartupsEverywhere: Lehi, UT*, Engine (May 10, 2019), <https://www.engine.is/news/category/startupseverywhere-lehi-utah> (Profile of Emily Smith, General Manager, Kiln)

² Zoë Henry, *Move Over Boulder: This Ski Slope City Is Becoming a Booming Startup Scene*, Inc. Magazine (July/August 2018), <https://www.inc.com/magazine/201808/zoe-henry/destination-salt-lake-city-utah.html>

literal reading of the legislation, is impossible to interpret given the definitions of “social media corporation” and “account holder.” In general, size thresholds based on the number of users fail to take into account whether a company actually has the resources to navigate the landscape and burdens created by changes to the law. Moreover, we worry this bill would create a standard that will chill the growth of companies that host user-generated content in general.

The truth is, content moderation is inherently difficult, and it’s impossible for anyone—let alone the new and small companies that lack the resources of their larger counterparts—to do it perfectly every time. Acceptable use policies and content moderation practices must be constantly changing and adapting to keep up with evolving speech and culture. This is especially relevant for companies that appeal to niche communities of users—as is often not just the case, but the comparative advantage for startups. Subculture can develop and change quickly among small, tight-knit groups, and for startups looking to attract loyal bases, adapting content moderation practices quickly is a necessity.

The bill ignores this need for a dynamic content moderation strategy and would make it nearly impossible to change content moderation practices as needed. By requiring companies to provide “a complete list of potential moderation practices,” banning “inequitable moderation” that consists of “inconsistent application” of a company’s policies, and banning the moderation of content that doesn’t strictly violate a company’s terms of service, the bill would effectively push companies to write broad, static, acceptable use policies that can’t be responsive to the ways users actually use their services. And the fact that the definition for “moderation practice” is open-ended and means “a method...to regulate a post” could mean the bill’s requirements and prohibitions end up sweeping in innocuous practices companies use to demote, promote, categorize, etc. user-generated content.

The bill would also create a burdensome appeals process, especially the requirement that a moderator who was not involved in the original moderation decision review the appeal request. While a company with the resources to hire thousands of content moderators might have its own issues ensuring that no appeals reviewer was involved in the initial moderation decision, this requirement would be impossible for smaller companies with much smaller teams of content moderators to comply with.

For the practical problems explained above, coupled with the fact that the bill raises constitutional and legal problems, we encourage you to veto this legislation. Thank you for your consideration of this issue and the impact it will have on Utah’s growing startup ecosystem.

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