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Defining and Regulating Online Platforms

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Defining and Regulating Online Platforms

The internet has been broadly characterized by an open, decentralized model of content creation, distribution, and consumption. Users' access to online content evolved from retrieving information from static websites to creating and distributing content through interactive websites. This transformation enabled the creation and growth of online platforms.

The term *online platform* is not defined in federal statute. An online platform generally refers to any computer application or service that provides digital content and services on the internet. Most platforms are operated by private sector companies, which can use algorithms to prioritize content and set policies to determine content allowed on the platform. Some platforms can attract, retain, and engage large numbers of users, and generate billions of dollars in revenue.

Several issues related to online platforms have been raised by some policymakers. These issues might be addressed by legislation enacted in states and other countries, actions taken by federal agencies, and market forces, among other ways. Congress could pursue oversight, such as asking representatives of platforms to testify in hearings, or pursue legislative action. If Congress chooses to pursue legislation, considerations may include

- **Addressing entities in legislation.** Although *online marketplace* is defined in federal statute, other subsets of online platforms are not. It may be difficult to identify common features that would incorporate all platforms Congress may seek to address without including others that share similar attributes. If Congress seeks to address "large" online platforms, options might include using thresholds for the number of active users and the operator's revenue and market capitalization. Each metric has its advantages and disadvantages.
- **Enforcing legislation.** Legislative options could include allowing federal agencies or state attorneys general to sue operators of online platforms to enforce the law, or creating a private right of action allowing individual lawsuits. The United States does not have a federal agency designated to solely regulate online platforms, although several agencies enforce laws that are applicable to online platforms and other entities. Some Members have proposed designating the Federal Communications Commission, the Federal Trade Commission (FTC), or a newly established agency to enforce legislation.
- **Creating a regulatory regime.** If Congress provides a federal agency with authority to promulgate regulations for online platforms, the agency might be able to adapt the regulations to technological changes. However, if regulations would require costly and time-intensive systems to be implemented, companies that have developed these systems or have the resources to easily do so may have a competitive advantage.

The 117th and 118th Congresses have introduced legislation to address issues related to online platform, including

- **Implementing transparency requirements.** Some bills would require companies to publish reports, provide independent researchers access to platform data, or direct a federal agency or taskforce to conduct studies on online platforms. One consideration may be who would benefit from having access to what type of information, and potential unintended effects, such as increased privacy risks for user data.
- **Addressing content moderation practices.** Some bills would address the publication, removal, or display order of content by amending or repealing Section 230 of the Communications Act of 1934. Although this would change the legal incentives faced by operators of online platforms, it would not *require* operators to change their platforms. Some bills create requirements for content moderation practices, such as requiring certain content to be published or removed, which could raise First Amendment concerns. Some bills require companies to make technical changes to provide users with greater control of the content they see, which may be difficult for some companies to implement.
- **Increasing competition.** Some bills would increase funding for the FTC and the Department of Justice's Antitrust Division, with the intent of increasing antitrust enforcement and competition. The outcomes of these cases depend on federal courts. Some bills would amend antitrust laws, which would affect firms across industries and might discourage firms from engaging in conduct that, in some instances, could increase competition. Some bills would create competition rules for "large" online platforms. A consideration may be whether certain competition rules should apply to all platforms, regardless of size.

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During the 1990s, policymakers in the United States generally supported allowing the private sector to develop products and services offered over the internet with limited government oversight.¹ In its vision of the internet being the Global Information Infrastructure, the Clinton Administration suggested a set of policy principles, including

- governments should encourage industry self-regulation and support private sector efforts to facilitate the operation of the internet;
- governments should refrain from imposing new and unnecessary regulations on commercial activities taking place via the internet;
- where government intervention is necessary, its goal should include ensuring competition and protecting consumers and their privacy; and
- governments should tailor their policies according to the decentralized nature and bottom-up governance of the internet.²

Congress enacted some federal statutes related to the internet in the 1990s. The Telecommunications Act of 1996 amended the Communications Act of 1934 to provide the Federal Communications Commission (FCC) with explicit authority to regulate companies that provide internet access.³ The legislation also included a section—the Communications Decency Act (CDA)—that was, in part, designed to prevent the transmission of indecent or offensive material over the internet to individuals under the age of 18. Although the Supreme Court ruled portions of the CDA unconstitutional,⁴ other sections of the CDA remain intact—notably Section 230 of the Communications Act.⁵ Section 230 generally precludes interactive computer service providers and users from being held liable for publishing, and in some instances restricting access to, third-party content.⁶

Some federal statutes set requirements specifically for providers of online services. For example, the Children’s Online Privacy Protection Act of 1998 creates requirements for operators of websites that collect personal information from children under the age of 13.⁷ Other statutes—such as antitrust and consumer protection laws—are applicable to entities that provide products and services on the internet, in addition to other entities.

Several issues related to online platforms have been raised by some policymakers. Some of the issues focus on specific types of online platforms—such as social media—or online platforms with large numbers of users or operated by large firms, often referred to as “Big Tech.”⁸ President

¹ Roxana Radu, “Privatization and Globalization of the Internet,” in *Negotiating Internet Governance* (New York, NY: Oxford University Press, 2019), pp. 75-112; and Mehan Grosse, “Public Goods and Private Interests: Setting the Table for the Commercial Internet in the 1990s,” *Critical Studies in Media Communication*, vol. 38, no. 5 (2021), pp. 408-422.

² The Clinton Administration, *The Framework for Global Electronic Commerce*, July 1997, at <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html>.

³ The Federal Communication Commission’s (FCC’s) authority is briefly discussed under “Federal Communications Commission,” which includes references to other Congressional Research Service (CRS) products that provide more in-depth discussions.

⁴ For more information, see CRS Report R47049, *Children and the Internet: Legal Considerations in Restricting Access to Content*, by Eric N. Holmes.

⁵ 47 U.S.C. §230.

⁶ *Ibid.* For more information, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

⁷ 15 U.S.C. §§6501-6506.

⁸ “Big Tech” often refers to Amazon, Apple, Google, Meta Platforms, and at times Microsoft. The term has also been used, at times, to include other “large” technology firms, such as Netflix.

Joe Biden and former President Donald Trump have made statements and signed executive orders regarding concerns about the actions of some online platforms, calling on Congress to pass legislation to address these concerns.⁹ Some Members of Congress have introduced bills aimed at regulating certain aspects of online platforms.¹⁰ The 117th Congress enacted the INFORM Consumers Act, which created requirements for online marketplaces, such as requiring operators to collect information about high-volume sellers.¹¹

Congress could choose not to pursue additional legislative action. Changes might be made to online platforms in response to legislation enacted by states and other countries, actions taken by federal agencies, market forces, public scrutiny, and other factors.

This report provides a brief description of online platforms and selected issues for specific types of platforms. It then provides some considerations for Congress in determining if and how it chooses to pursue legislation related to online platforms.

Online Platform Concepts and Characteristics

Existing federal laws do not explicitly define the term *online platform*.¹² In general, an online platform refers to any computer application or service that hosts and provides digital content and services on the internet and facilitates access, distribution, creation, sharing, and exchange of information.¹³ Some examples of commonly used online platforms include a variety of web services, such as social media, online marketplaces, and search engines. Most users access platforms and their online services through websites or applications (apps) using internet-connected devices, such as desktops, laptops, and mobile and smart devices.

Digital content (i.e., online content) can broadly include any information created, transmitted, and accessible using hardware, software, and networks of the internet. Online content can be generated and distributed by the operator of an online platform (i.e., user-consumable content) as well as its users (i.e., user-generated content).¹⁴ Those who provide online content may fall in the federal statutory definition of *information content providers*—“any person or entity that is responsible, in whole or in part, for the creation or development of information provided through

⁹ Executive Order (E.O.) 13925, “Preventing Online Censorship,” 85 *Federal Register* 34079, May 28, 2020; E.O. 14036, “Promoting Competition in the American Economy,” 86 *Federal Register* 36987, July 9, 2021; President Joe Biden, “Republicans and Democrats, Unite Against Big Tech Abuses,” *Wall Street Journal*, January 11, 2023, at <https://www.wsj.com/articles/unite-against-big-tech-abuses-social-media-privacy-competition-antitrust-children-algorithm-11673439411>; and President Donald J. Trump, “Donald J. Trump: Why I’m Suing Big Tech,” *Wall Street Journal*, July 8, 2021, at <https://www.wsj.com/articles/donald-j-trump-why-im-suing-big-tech-11625761897>.

¹⁰ The 117th and 118th Congresses introduced more than 80 bills containing the phrase “online platform” as of August 2023, based on a CRS search on Congress.gov. This report focuses on these bills.

¹¹ P.L. 117-328, Division BB, Title III, §301. The section is similar to S. 936 and the amended version of H.R. 5502 introduced in the 117th Congress.

¹² Some bills introduced in Congress would define *online platform*; see section “Defining Online Platforms in Legislation.”

¹³ See David D. Clark, *Designing an Internet* (Cambridge, MA: The MIT Press, 2018), p. 5. In this report, CRS refers to the global, public internet in its discussion of online platform and content issues. The internet infrastructure also enables applications and services in closed networks, for example, of a public or private organization. The public internet is generally accessible to users through internet service providers (ISPs).

¹⁴ For example, consider the website <http://www.congress.gov>. *User-consumable content* includes text, pictures, graphics, audio files, video files, and links that users can access on different pages of the website, in addition to the website’s layout, design, domain name (congress.gov), and its corresponding IP address (e.g., 140.147.239.145). *User-generated content* includes the profile information a user provided when registering an online account; the IP address and other device and browser information of the user; and any information about the user’s behavior on the website, such as the time the user visited the website, the links the user clicked on, and search terms the user entered.

the [i]nternet or any other interactive computer service.”¹⁵ The FCC also categorized online content providers as *edge providers*.¹⁶

Some policymakers have expressed concern about online platforms’ control, management, and distribution of content.¹⁷ Some popular online platforms, for example, host enormous volumes of online content at the magnitude of petabytes of data.¹⁸ These platforms have millions of active users and generate billions of dollars in revenue.¹⁹

This section provides a brief overview of the evolution of web services—focusing on online content—and characteristics of online platforms that have contributed to the dominance of popular platforms operated by a few companies.

Online Content in the Evolution of Web Services

In the original form of web services (commonly known as Web 1.0), websites were designed as a global, interconnected “information space” to host online content and allow users to retrieve information from online resources.²⁰ Content providers in this form of web services could develop, publish, and manage content (in the form of simple text and graphics) on their websites without much interaction with individuals who visited the website. Most visitors would connect to websites and view content through web browsers installed on their computers.²¹

Information flow in Web 1.0 services largely goes in one direction—from one website to multiple visitors, similarly to traditional broadcasting media such as TV and radio. The technology supporting Web 1.0, however, enabled an open and decentralized model of content creation, distribution, and consumption. Content providers are no longer limited to broadcasting organizations and professionals, and content can be delivered without limitations of time (e.g., broadcasting schedule) and space (e.g., physical distance). Without licensing requirements or other regulatory compliance in traditional broadcasting, any individual using the internet can become an online content provider by creating a website. Internet users can choose the source and

¹⁵ 47 U.S.C. §230(f)(3).

¹⁶ An *edge provider* is an individual or entity that provides “content, applications, services, and devices accessed over or connected to broadband Internet access service.” See FCC, *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, December 23, 2010, paragraph 20, at https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf.

¹⁷ For example, see §3 of the Honest Ads Act (S. 486 and H.R. 2599, 118th Congress).

¹⁸ One petabyte (PB) is equal to 1 million gigabytes, and one byte can be used to represent a single English letter or special character.

For example, Facebook reported a data storage size of 300 PB in its data warehouse in 2014, with an incoming daily rate of 0.6 PB; see Pamela Vagata and Kevin Wilfong, “Scaling the Facebook Data Warehouse to 300 PB,” *Engineering at Meta*, April 10, 2014, at <https://engineering.fb.com/2014/04/10/core-data/scaling-the-facebook-data-warehouse-to-300-pb/>. Netflix reported it had hundreds of PB of data in its data warehouse in 2020; see Anupom Syam, “Optimizing Data Warehouse Storage,” *Netflix Technology Blog*, December 21, 2020, at <https://netflixtechblog.com/optimizing-data-warehouse-storage-7b94a48fdcb>.

As another example, the Library of Congress reported that its digitized, publicly available collection on the internet in 2022 was about 21 PB; see Library of Congress, “Frequently Asked Questions,” at <https://www.loc.gov/programs/digital-collections-management/about-this-program/frequently-asked-questions/>.

¹⁹ For example, Meta Platforms reported 266 million monthly active users of its Facebook services in the United States and Canada in December 2022; see Meta Platforms, Inc., SEC Form 10-K for the year ending December 31 2022, p. 62. Alphabet reported over \$224 billion in Google advertising revenue in 2022; see Alphabet, Inc., SEC Form 10-K for the fiscal year ending December 31, 2022, p. 56.

²⁰ Ian Jacobs and Norman Walsh, eds., *Architecture of the World Wide Web, Volume One*, W3C, December 15, 2004, at <https://www.w3.org/TR/webarch/>.

²¹ The so-called “client-server architecture” remains the primary operational model of many web services today.

amount of content they wanted to receive from a wider pool of content providers. Nevertheless, a website in the Web 1.0 form does not enable interactions between the content provider and website visitors.

An evolution of web services—known as Web 2.0—moved websites beyond static presentation of content to a more interactive model that fosters user participation and content creation, collaboration, and sharing. The evolution has led to numerous types of Web 2.0 services, from early forms of online message boards and discussion forums, wikis,²² and blogs allowing visitor feedback and comments to more recent peer-production services,²³ such as social networking, instant messaging, virtual communities, “sharing economy” services,²⁴ crowdsourcing,²⁵ and online file, photo, and video sharing. The use of the terms Web 1.0 and Web 2.0 does not preclude the co-existence of web services in either form. Many websites today still exist in the non- or less-interactive form of Web 1.0.

In Web 2.0 services, users transform from mere content consumers to proactive content creators and distributors. This creates opportunities for online platforms to collect more information and data from users, which in turn enables personalized online content for users. Some companies began investing in technology and infrastructure to store and analyze large amounts of data and learn from users’ online behavior. These efforts allowed some web services to grow rapidly and offer users new channels for content creation, consumption, and distribution to facilitate user engagement.

The transition to Web 2.0 enabled the creation and growth of large online platforms. These platforms can attract and retain a large number of users, who actively generate, exchange, and consume content on the platforms. Platforms can use their large user bases to generate revenue through subscriptions and targeted advertisements. A platform that attracts more active and engaged users might be able to collect and analyze more user data to understand users’ behavior and interests. This information could be used to generate more revenue, particularly for platforms that obtain revenue from targeted advertising. Network effects could further amplify this cycle.²⁶

Network Effects

According to the theory of network effects, a user’s perceived value of an online platform increases as the number of active users grows.²⁷ As the number of active users grows, existing users are more willing to stay on the platform, and more potential users are willing to start using it. As a platform obtains more users, the network

²² A *wiki* is a website that can be modified or contributed to by users. See Michael Aaron Dennis, “Wiki,” *Britannica*, at <https://www.britannica.com/topic/wiki>.

²³ Peer production refers to “collaborative work among users to create content and provide services.” John Gallaugh, *A Manager’s Guide to Harnessing Technology*, version 9.1 (Boston, MA: FlatWorld, 2022), p. 291 (hereinafter Gallaugh, *A Manager’s Guide*, 2022).

²⁴ *Sharing economy*, also referred to as “collaborative consumption,” is a business model that enables online users to temporarily share access to products or services rather than having ownership. Examples include room-sharing services (e.g., Airbnb) and ride-sharing services (e.g., Uber). See Gallaugh, *A Manager’s Guide*, 2022, pp. 295, 345.

²⁵ *Crowdsourcing* refers to a practice of obtaining services or content by soliciting contributions from online users rather than from employees or suppliers. See Merriam-Webster.com, “Crowdsourcing,” at <https://www.merriam-webster.com/dictionary/crowdsourcing>.

²⁶ In general, the theory of *network effects*, sometimes referred to as “Metcalfe’s Law,” describes how the number of relationships between network members grows exponentially with the number of users. According to the theory, if a network has 10 interconnecting nodes, its inherent value is 100 ($10 * 10$); if the network adds another 10 nodes, its value increases to 400 ($20 * 20$). An online platform is such a network, in which users, as nodes, are able to communicate and share information with each other. See Gallaugh, *A Manager’s Guide*, 2022, p. 261.

²⁷ See Tim Stobierski, “What Are Network Effects?” *Harvard Business School Online*, Business Insights Blog, November 12, 2020, at <https://online.hbs.edu/blog/post/what-are-network-effects>.

effect further increases the platform's perceived value, making it even more attractive to new users. Many platform operators strive to achieve this virtuous cycle inherent in network effects, "where the biggest networks become even bigger."²⁸ This can result in one or a small number of platform operators gaining a competitive advantage.

Characteristics of Online Platforms

Some online platforms have leveraged network effects to grow their user base to billions of users in less than 20 years.²⁹ These platforms can influence content seen by users by using algorithms to prioritize certain content and setting rules and policies on the content allowed on each platform. Some of them have transformed into powerful, centralized information sources for their massive user bases.³⁰ These platforms often exhibit three characteristics that reinforce one another and strengthen their network effects:

1. The platform enables and facilitates user interconnections and interactions, functioning as a hub of a distributed network or a virtual community. Its primary value comes from users, content, and information exchange.³¹
2. Content creators and consumers converge virtually on the platform to benefit from engaging with each other. As more participants find one another on the platform, there are more activities on the platform, and the platform provides more value to all.³²
3. In addition to the primary web service, the platform offers complementary features and third-party products and services that add value to the primary service to maximize its potential value, boost user engagement (e.g., communicating and sharing content with each other), retain existing users, and attract new users.³³ The more platform services that are used, the higher the switching costs for the user and the higher likelihood that the user will stay.³⁴

These three characteristics often result in online platforms with a similar basic structure.³⁵ At the center is the platform's operator, the majority of which are companies in the private sector. The operator sets its own rules and systems to control access and interface with users, and determines

²⁸ Gallagher, *A Manager's Guide*, 2022, p. 270.

²⁹ For example, the online social networking service Facebook was founded in 2004, and it had nearly 3 billion monthly active users on average as of March 31, 2023. Meta Platforms, Inc., "Meta Reports First Quarter 2023 Results," April 26, 2023, p. 1, at https://s21.q4cdn.com/399680738/files/doc_financials/2023/q1/Meta-03-31-2023-Exhibit-99-1-FINAL-v2.pdf.

³⁰ See Harvard Business Review, *The Platform Economy: How Online Marketplaces Are Changing the Face of Business*, at <https://hbr.org/insight-center/the-platform-economy>.

³¹ Marshall W. Van Alstyne, Geoffrey G. Parker, and Sangeet Paul Choudary, "Pipelines, Platforms, and the New Rules of Strategy," *Harvard Business Review*, vol. 94, no. 4 (April 2016), p. 56 (hereinafter Van Alstyne, Parker, and Choudary, "Pipelines, Platforms," 2016).

³² Ibid.

³³ For example, a social network service user can play online games, order food delivery, transfer money to another user, or log into a third-party web service, in each case using the same user credentials (i.e., the user's name, password, and profile) of the social network platform.

³⁴ *Switching costs* refer to those a user incurs when moving from one product or service to another, which include investments in money and time, efforts to learn how to use the new product or service, and any data loss. Gallagher, *A Manager's Guide*, 2022, pp. 263-264.

³⁵ Van Alstyne, Parker, and Choudary, "Pipelines, Platforms," 2016, p. 56.

how to operate and govern its platform.³⁶ The operator may revoke a user’s access to the platform if it believes the user’s behavior or content violates its policies and negatively affects its platform (e.g., reducing user engagement and revenue). The operator’s actions affect the content that users can and cannot see.

The scale of users, another critical part of the platform, and their data can provide a competitive advantage for incumbents.³⁷ It can be difficult for nascent competitors to quickly attract users, particularly when incumbents have large amounts of users’ data that can help them provide better targeted advertisements and more personalized experiences. The platform may even shape its users’ demands through tailored content and recommendations.

Policy Considerations for Legislation

Congress might choose to enact legislation related to online platforms to address various issues, some of which are summarized in **Table 1**. Alternatively, Congress might choose not to pursue legislative action, allowing market forces or states and other countries to pursue remedies if needed. Legislation implemented by states and other countries might incentivize some operators to change their online platforms for all users, although other operators might do so only for platforms accessed from the respective states and countries.³⁸ Other factors—such as actions taken by federal agencies and public scrutiny—could also incentivize operators to make changes.

Congress could also take actions in addition to or instead of enacting legislation. For example, Congress has asked representatives of platforms to testify under oath in hearings,³⁹ requested information about platforms from companies,⁴⁰ and sent letters to federal agencies about their concerns.⁴¹ Such actions might incentivize operators to change their platforms.

If Congress chooses to pursue legislation related to online platforms, some broad policy considerations may include the entities it seeks to address and who would enforce the legislation. Additionally, Congress might consider whether to enact specific requirements for online platforms in legislation or create a regulatory regime. This section provides a more in-depth discussion of these considerations. For legal considerations, see CRS Legal Sidebar LSB10889, *Regulating Big Tech: CRS Legal Products for the 118th Congress*, coordinated by Valerie C. Brannon.

³⁶ Throughout this report, “operator” and “company” are used interchangeably.

³⁷ Van Alstyne, Parker, and Choudary, “Pipelines, Platforms,” 2016, p. 60.



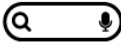
³⁸ Examples of enacted legislation that set requirements for online platforms include California’s Age-Appropriate Design Code Act and the European Union’s (EU’s) Digital Markets Act and Digital Services Act.

³⁹ For example, see U.S. Congress, Subcommittee on Antitrust, Commercial, and Administrative Law of the House Committee on the Judiciary, *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship*, hearings, 116th Cong., 1st sess., July 16, 2019 (Washington, DC: GPO, 2019), at <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD015.pdf>.

⁴⁰ For example, see letter from Representatives Jim Jordan, et al. to Meta Platforms CEO Mark Zuckerberg, September 1, 2022, at https://oversight.house.gov/wp-content/uploads/2022/09/090122_Letter-to-Mark-Zuckerberg.pdf.

⁴¹ For example, see letter from Senators Elizabeth Warren, et al. to FTC Chair Lina Khan, March 31, 2022, at <https://www.warren.senate.gov/imo/media/doc/2022.03.31%20Letter%20to%20FTC%20re%20Activision%20Microsoft%20Deal.pdf>.

Table I. Selected Online Platforms and Policy Issues

	Social Media 	Online Marketplaces 	Search Engines 
Description of primary purpose	Platforms that allow users to post, view, share, and interact with user-generated content.	Platforms that enable third parties to sell and deliver consumer products.	Platforms that allow users to search the web to find websites relevant to the searched terms.
Issues: Moderation	Companies determine what user-generated content to host on their platforms, which has raised concern about the content companies allow or remove.	Companies often remove reported counterfeit products sold on their platforms or fake reviews. However, many fake products and reviews remain.	Search results may include websites that provide incorrect, “junk” (i.e., low quality), and illegal content. It may be difficult to remove these websites from search results, particularly if users do not report them.
Issues: Content recommendation	Content is recommended to users in personalized feeds, which has raised concerns about algorithms amplifying harmful content and reducing the visibility of certain viewpoints.	Some marketplaces allow users to search for products and to recommend products, some of which may be promoted if the seller pays a fee. A company that operates a marketplace and sells products on the marketplace could “self-preference” (i.e., recommend its own products).	Some search engines prioritize advertisements or websites that pay for a higher placement in search results, rather than the most relevant or “best” website.
Issues: Competition	Social media platforms are particularly affected by network effects, which has led to a few dominant platforms, including TikTok, Facebook, and Instagram. It may be difficult for a user to switch to another platform, particularly transferring all of their contacts, messages, data, and network connections.	A company that operates an online marketplace and sells products on the marketplace might have a competitive advantage over other sellers. This concern has focused primarily on Amazon.com, Inc., which operates the marketplace Amazon and sells products under the brand Amazon Basics. ⁴²	Search engines can collect data on websites users select in response to search terms, making it data-intensive and difficult for new companies to offer similar services. Google accounts for nearly 90% of all general searches. ⁴³ Some companies have alleged that Google prioritizes its own products and copies third-party content in “information panels” on its search engine. ⁴⁴

Source: Congressional Research Service (CRS).

Note: Other online platforms might fit the description of the selected online platforms in the table, but might not typically be categorized as that type of platform (see “Defining Online Platforms in Legislation”).

⁴² House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, *Investigation of Competition in Digital Markets*, 2020, pp. 268-302, at https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

⁴³ “Amended Complaint,” *United States et al. v. Google LLC*, case no. 1:20-cv-03010 (D.D.C.), January 15, 2021, p. 4.

⁴⁴ House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, *Investigation of Competition in Digital Markets*, 2020, pp. 182-193, at https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

Covered Entities

Congress could create requirements for all online platforms, which would affect companies offering a wide range of services,⁴⁵ or for a subset of platforms, such as specific types of platforms or platforms of a certain size.⁴⁶ This section discusses some considerations for defining online platforms and determining the size of a platform.

Defining Online Platforms in Legislation

The term *online platform* is not defined in federal statute. The 117th Congress defined *online marketplace* in the INFORM Consumers Act,⁴⁷ but other types of online platforms are not defined in federal laws. Some federal statutes define terms that generally include online platforms, in addition to other entities (see **text box**).

Selected Terms Defined in Federal Statute Related to Online Platforms

The following terms defined in federal statute are generally considered to include online platforms; the list is not comprehensive:

- *Electronic communication service* (18 U.S.C. §2510): any service which provides to users thereof the ability to send or receive wire or *electronic communications*, which is defined as any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—
 - (A) any wire or oral communication;
 - (B) any communication made through a tone-only paging device;
 - (C) any communication from a tracking device (as defined in §3117 of this title); or
 - (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;
- *Interactive computer service* (47 U.S.C. §230): any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.
- *Service provider* (17 U.S.C. §512): (A) As used in subsection (a), the term “service provider” means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.
 (B) As used in this section, other than subsection (a), the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

Some bills define online platform, with variation in scope depending on the legislative context. Examples include the following:

- In a bill that seeks to protect minors from certain online risks, “Any public-facing website, online service, online application, or mobile application that predominantly provides a community forum for user generated content, including sharing videos, images, games, audio files, or other content;”⁴⁸

⁴⁵ For example, see Algorithmic Justice and Online Platform Transparency Act (H.R. 4624, 118th Congress).

⁴⁶ For example, see Journalism Competition and Preservation Act of 2023 (S. 1094, 118th Congress).

⁴⁷ P.L. 117-328, Division BB, Title III, §301(f)(4); codified at 15 U.S.C. §45f.

⁴⁸ See §2(6) of Kids Online Safety Act (S. 1409, 118th Congress).

- In bills that seek to create certain advertising requirements related to federal elections, “Any public-facing website, web application, or digital application (including a social network, ad network, or search engine);”⁴⁹ and
- In a bill that seeks to allow certain online publishers to collectively negotiate with certain online platforms regarding content distribution, “Any website, online or mobile application, operating system, digital assistant, or online service that provides users with access to certain news and journalism works.”⁵⁰

Some bills define subsets of online platforms that would be addressed,⁵¹ while other bills are directed to “covered platforms” that have certain characteristics.⁵² Some companies may be discouraged from offering certain products or services to avoid regulation if legislation were enacted, depending on the requirements it would create.

One potential difficulty may be identifying common features shared by all platforms Congress seeks to address without including other platforms that share similar attributes. As an example, a defining feature of platforms initially considered *social media*—such as Friendster, MySpace, and Facebook—was the ability to create, share, and interact with user-generated content within social networks created by each user.⁵³ However, users’ social networks have become less important over time. Some platforms that are often considered social media—such as TikTok and YouTube—benefit from network effects but prioritize content largely based on its potential relevance to the user’s interests, reducing the importance of users’ networks. Potentially in response to competitive pressure from these platforms, Facebook and Instagram now include “suggested” content based on its potential relevance, even if the creator is outside a user’s network.⁵⁴ Furthermore, platforms that typically are *not* considered social media—such as the online games Fortnite and Roblox⁵⁵—allow users to create, share, and interact with user-generated content. Any site with a comment section has some user-generated content.

To address this issue, some bills list specific platforms or types of platforms that are excluded. For example, some bills targeting social media exclude platforms that are primarily used to provide news or other forms of information, such as business or travel.⁵⁶ Some companies may modify their platforms as technologies develop or to avoid regulation in response to targeted definitions.

⁴⁹ See §3(b) of the REAL Political Advertisements Act (S. 1596, H.R. 3044, 118th Congress) and §8(a) of the Honest Ads Act (S. 486, H.R. 2599, 118th Congress).

⁵⁰ See §2(8) of the Journalism Competition and Preservation Act of 2023 (S. 1094, 118th Congress).

⁵¹ For example, see the Social Media Child Protection Act (H.R. 821, 118th Congress).

⁵² For example, see the American Innovation and Choice Online Act (S. 2033, 118th Congress).

⁵³ L. DeNardis and A.M. Hackl, “Internet Governance by Social Media Platforms,” *Telecommunications Policy*, vol. 39, no. 9 (October 2015), pp. 761-770, at <https://www.sciencedirect.com/science/article/pii/S0308596115000592>; and Tarleton Gillseppe, “The Politics of ‘Platforms,’” *New Media & Society*, vol. 12, no. 3 (May 1, 2010), pp. 347-364, at <https://doi.org/10.1177/1461444809342738>.

⁵⁴ Meta, “Suggested Content on Facebook Feed,” Meta Business Help Center, accessed on May 3, 2023, at <https://www.facebook.com/business/help/1082519118875784>; and Meta, “How Instagram Feed Works,” Instagram Help Center, accessed on May 3, 2023, at <https://help.instagram.com/1986234648360433/>.

⁵⁵ Fortnite and Roblox are also considered “proto-metaverses” (e.g., Edd Gent, “What Can the Metaverse Learn from Second Life?” *IEEE Spectrum*, November 29, 2021, at <https://spectrum.ieee.org/metaverse-second-life>). For more information about the metaverse, see CRS Report R47224, *The Metaverse: Concepts and Issues for Congress*, by Ling Zhu.

⁵⁶ For example, see SAFETY on Social Media Act of 2023 (S. 872, 118th Congress).

Some bills provide an agency with the authority to update the definition of the targeted online platforms.⁵⁷ While this may help ensure the legislation remains relevant to nascent platforms, it may also create some uncertainty, depending on how frequently the definition is altered and how much guidance Congress gives the agency. Providing greater clarity for companies, enforcers,⁵⁸ and courts may help ensure the legislation is enforced as Congress intended.

Determining “Large” Online Platforms

At least one of the following three metrics are typically used to define “large” online platforms: (1) the number of active users, (2) the operating company’s revenue, and (3) the operating company’s market capitalization (market cap).⁵⁹

Active Users

The term *active users* refers to the number of users who visit an online platform within a certain period, typically estimated for each month (monthly active users, MAUs) or day (daily active users, DAUs). Some companies self-report their MAUs and DAUs in a particular geographic area to indicate the level of user engagement with their platforms, particularly companies that rely on online advertising as their primary source of revenue (**Table 2**). MAUs and DAUs indicate how many individuals might see ads carried on the platform, which can affect the potential revenue and visibility of ads—information that both investors and advertisers are likely interested in. In the United States, companies are not required to estimate the number of active users on their platforms. Platforms that operate in the European Union (EU) need to disclose these data if they have more users than 10% of the EU population—currently 45 million users.⁶⁰

⁵⁷ For example, see the Social Media DATA Act (H.R. 3451, 117th Congress).

⁵⁸ For more information on potential enforcers of legislation, see the section on “Potential Enforcers.”

⁵⁹ For example, see the American Innovation and Choice Online Act (S. 2033, 118th Congress).

⁶⁰ The EU’s Digital Services Act (DSA) requires online platforms that bring together sellers and consumers (e.g., online marketplaces, app stores, social media platforms) to meet certain requirements, with additional requirements for “very large online platforms”—online platforms with more than 45 million users in the EU. For more information about the DSA, see European Commission, “The Digital Services Act: Ensuring a Safe and Accountable Online Environment,” accessed on June 23, 2023, at https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en.

Table 2. Active Users for Selected Online Platforms

Company	Online Platform	Number of Users	Geographic Area	Definition of Active User
eBay, Inc.	eBay	134 million active buyers	Worldwide	All buyer accounts that paid for a transaction on eBay Marketplace platforms within the previous 12-month period. Buyers may register more than once and, as a result, may have more than one account.
Meta Platforms, Inc.	Facebook and Facebook Messenger	199 million DAUs; 266 million MAUs	United States & Canada	A registered and logged-in Facebook user who visited Facebook through its website or a mobile device, or used its Messenger application (and is also a registered Facebook user).
	Family of Apps (Facebook, Instagram, Messenger, and/or WhatsApp)	2.96 billion daily active people; 3.74 billion monthly active people	Worldwide	A registered and logged-in user of one or more Family products who visited at least one of these Family products through a mobile device application or using a web or mobile browser.
Netflix, Inc.	Netflix	74 million paid memberships	United States & Canada	A membership that has the right to receive Netflix service following sign-up and a method of payment being provided, and that is not part of a free trial or certain other promotions that may be offered by the company to new or rejoining members. Certain members have the option to add extra member sub accounts. These extra member sub accounts are not included in paid memberships.
Pinterest, Inc.	Pinterest	95 million MAUs	United States & Canada	An authenticated Pinterest user who visits the company's website, opens its mobile application, or interacts with Pinterest through one of its browser or site extensions, such as the Save button, at least once during the 30-day period ending on the date of measurement.
Roblox Corporation	Roblox	13.3 million DAUs	United States & Canada	A user who has logged in and visited Roblox through its website or application on a unique registered account on a given calendar day. If a registered, logged in user visits Roblox more than once within a 24-hour period that spans two calendar days, that user is counted as a DAU only for the first calendar day.
SNAP, Inc.	Snapchat	100 million DAUs	North America	A registered Snapchat user who opens the Snapchat application at least once during a defined 24-hour period. Snapchat calculates average DAUs for a particular quarter by adding the number of DAUs on each day of that quarter and dividing that sum by the number of days in that quarter.

Source: Most recent 10-K filing with the Securities and Exchange Commission (all companies had a fiscal year ending December 31, 2022).

Notes: DAU = daily active users; MAU = monthly active users. The estimates are for the smallest geographic area reported by the company that includes the United States. The listed companies are a representative list of publicly-traded companies that report the number of users; the list is not comprehensive. The number of users is for the most recent reported period, which can be the average for the most recent month, quarter, or year.

An industry standard for estimating active users does not exist.⁶¹ Companies use different types of internal data—such as the number of user profiles or IP addresses⁶²—and proprietary methods to identify users.⁶³ Some companies also use algorithms and other tools to remove duplicate and false accounts and identify individuals with multiple accounts,⁶⁴ and others assume none of the accounts are duplicates.⁶⁵ Some companies might not be able to, or might choose not to, estimate or report the number of active users.⁶⁶ Instead, these companies provide other metrics—such as the revenue obtained from advertising,⁶⁷ sales information,⁶⁸ or the average number of paying members—to indicate their current performance to investors and other stakeholders.⁶⁹

Some online platforms can attract users quickly. For example, the artificial intelligence (AI) chatbot ChatGPT reportedly took two months to reach over 100 million MAUs, and TikTok took nine months after its global debut to reach this number.⁷⁰ Meta’s most recently released text-based social media app Threads reportedly had more than 30 million users sign up within about 18 hours of its launch and 70 million users within two days.⁷¹ These rapid rates of growth may be anomalies rather than the norm, particularly for Threads, as Instagram’s popularity likely contributed to its rapid growth. The operator of a nascent service that quickly grows in popularity to reach the threshold for a large platform may have difficulty meeting proposed legislative requirements, although this may depend on the specifics of the requirements. In addition, the number of users can decline quickly; the number of users on Threads reportedly declined by 70% from its highest point within two weeks.⁷²

⁶¹ Eric Goldman and Jess Miers, “Regulating Internet Services by Size,” *Competition Policy International Antitrust Chronicle*, May 2021, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3863015.

⁶² IP address stands for internet protocol address. It is a unique set of numbers assigned to each internet-connected device.

⁶³ For example, see Pinterest, Inc., SEC Form 10-K for the year ending December 31, 2022.

⁶⁴ For example, Meta Platforms removes duplicate accounts using “data signals such as identical IP addresses and similar user names” and removes false accounts by “look[ing] for names that appear to be fake or other behavior that appears inauthentic to the reviewers.” It also reports “Daily Active People” and “Monthly Active People” across Facebook, Instagram, Messengers, and WhatsApp. It uses “complex techniques, algorithms, and machine learning models that seek to estimate the underlying number of unique people using one or more of these products, including by matching user accounts within an individual product and across multiple products when we believe they are attributable to a single person.” See Meta Platforms, Inc., SEC Form 10-K for the year ending December 31, 2022, pp. 5-6, 59-60.

⁶⁵ For example, SNAP does not estimate the number of unauthorized or multiple accounts, because doing so would violate its terms of service, according to SNAP. See SNAP Inc., SEC Form 10-K for the year ending December 31, 2022, p. 5.

⁶⁶ For example, DuckDuckGo—a search engine—does not track users but assumes that each user conducts about 30 searches per month. Using this system, it estimated that there were approximately 80 million users as of November 2020, the most recent data available. See DuckDuckGo, “How Many People Use DuckDuckGo?,” accessed on June 23, 2023, at <https://spreadprivacy.com/how-many-people-use-duckduckgo/>.

⁶⁷ For example, see Alphabet Inc., SEC Form 10-K for year ending December 31, 2022.

⁶⁸ For example, see Amazon.com, Inc., SEC Form 10-K for the year ending December 31, 2022.

⁶⁹ For example, see Netflix, Inc., SEC Form 10-K for the year ending December 31, 2022.

⁷⁰ Krystal Hu, “ChatGPT Sets Record for Fastest-Growing User Base – Analyst Note,” *Reuters*, February 2, 2023, at <https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/>.

⁷¹ Aditya Soni, “Meta’s Threads Swiftly Signs Up 30 Million Users, in Clear Threat to Musk-Owned Twitter,” *Reuters*, July 6, 2023, at <https://www.reuters.com/technology/metatars-threads-is-true-threat-musk-owned-twitter-analysts-say-2023-07-06/>; and Lauren Feiner, “Meta’s Twitter Rival Threads Explodes to 70 Million Signups One Day After Launch,” *CNBC*, July 7, 2023, at <https://www.cnn.com/2023/07/07/metatars-twitter-rival-threads-surpasses-50-million-signups-screenshots.html>.

⁷² Sarah Perez, “Threads in Decline? Don’t Count out Instagram’s New Twitter Rival Yet,” *TechCrunch*, July 21, 2023, at <https://techcrunch.com/2023/07/21/threads-in-decline-dont-count-out-instagrams-new-twitter-rival-yet/>.

Revenue

The revenue received by a company that operates an online platform might indicate the number of users of a company's products and services. For example, among companies operating platforms that obtain revenue from subscriptions and charge the same price, the platform with the highest number of users would have the highest revenue.

Some companies may have difficulty monetizing their platforms, even if they have a large number of users.⁷³ Companies typically obtain revenue through advertisements or subscriptions. However, some platforms might struggle with attracting advertisers or obtaining revenue from ads if, for example, a user must click on the ad for the platform to obtain revenue. Some companies—particularly nascent ones—may be concerned that if their platform were subscription-based, it would lose users. In addition, some companies operate multiple platforms or offer multiple services on their platform, grouping some products and services, rather than reporting them individually.⁷⁴

Market Cap

Market cap is the perceived value of a publicly listed company, calculated by multiplying the price of the company's stock by the number of stock shares issued.⁷⁵ This can reflect the current performance of a company's platforms and the expected future performance. For example, a company's stock price might be affected by its latest reported revenue and MAUs, as well as statements made by the CEO about future plans for the platform. Thus, even if a company reports a small increase in revenue, its stock price and market cap might have a large increase because investors believe the company will become more profitable in the future.

Market cap can fluctuate frequently. In addition to considering the future potential performance of a company, investors might be responding to the perceived value of the company's activities, including those unrelated to the platform, and concerns about the overall economy or other concerns related to an industry. For example, many companies in the tech industry had a decline in market cap from 2021 to 2022, although their revenues continued to increase (**Figure 1, Figure 2**). Furthermore, some online platforms are owned and operated by private entities, such as an individual or private equity firm, meaning it is not possible to calculate their market cap.

⁷³ For example, Twitter and Reddit struggled with monetizing their platforms (see, for example, David Auerbach, "Twitter at the Crossroads," *Slate*, April 29, 2015, at <https://slate.com/technology/2015/04/twitter-earnings-and-acquisitions-the-companys-in-trouble-and-its-options-are-bleak.html>; and David Curry, "Reddit Revenue and Usage Statistics," *Business of Apps*, updated January 9, 2023, at <https://www.businessofapps.com/data/reddit-statistics/>).

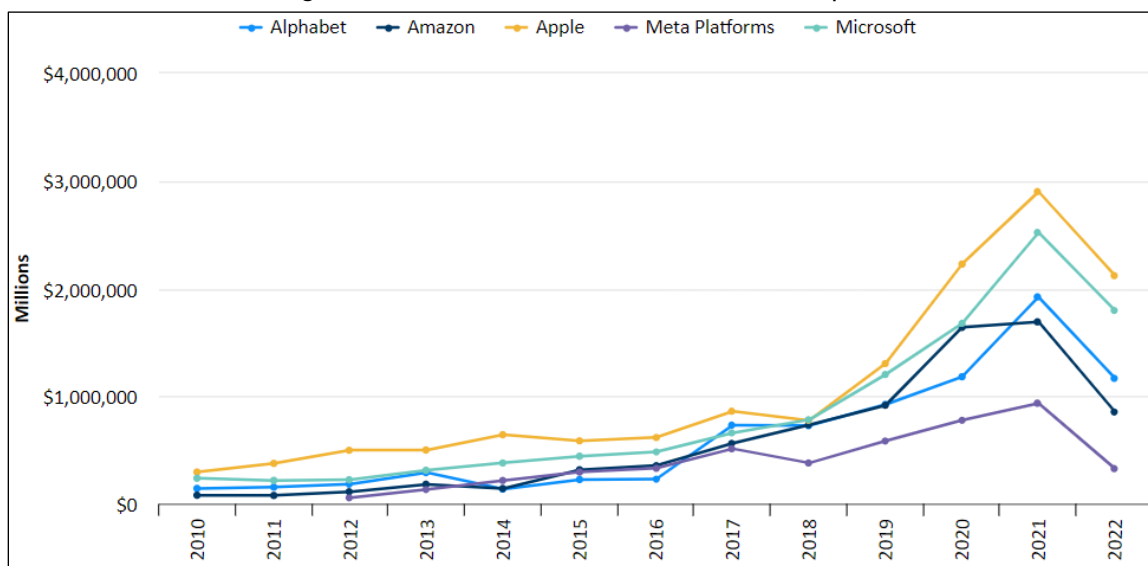
⁷⁴ For example, Meta Platforms reports total revenue and separates revenue into certain categories (e.g., advertising vs. non-advertising revenue), but it does not report a separate revenue for each platform (e.g., Instagram, Facebook, WhatsApp) and does not report a separate revenue for its services within each platform (e.g., Facebook Marketplace). See Meta Platforms, Inc., SEC Form 10-K for the year ending December 31, 2022.

⁷⁵ U.S. Securities and Exchange Commission (SEC), "Market Capitalization," accessed on February 10, 2023, at <https://www.investor.gov/introduction-investing/investing-basics/glossary/market-capitalization>; and Financial Industry Regulatory Authority, "Market Cap Explained," September 30, 2022, at <https://www.finra.org/investors/insights/market-cap>.

Figure 1. Market Capitalization for Selected Companies

Nominal Values (Not Adjusted for Inflation)

Figure is interactive in the HTML version of this report.

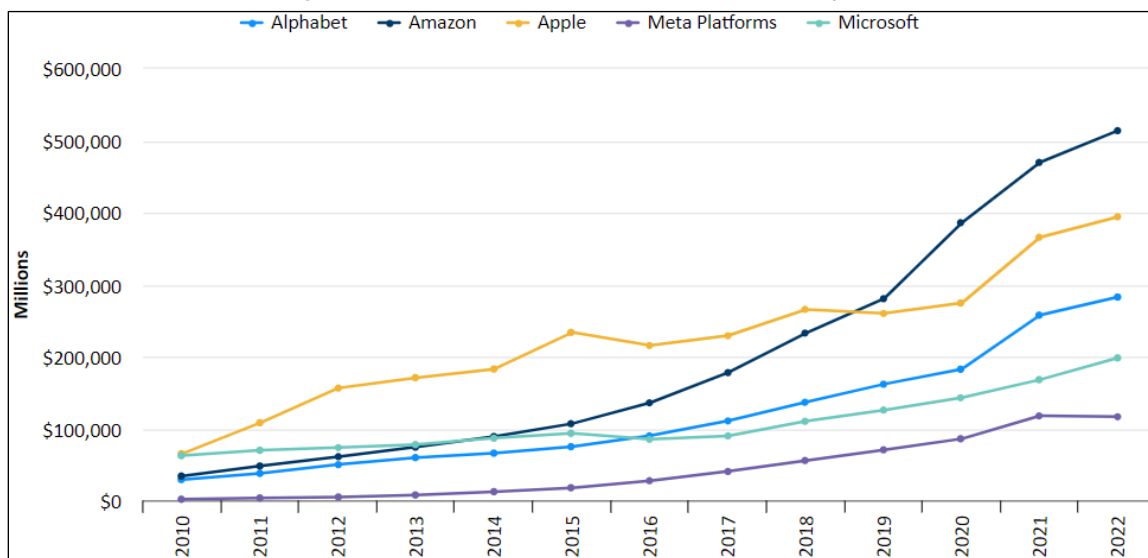


Source: CRS using Global Financial Data.

Figure 2. Revenue for Selected Companies

Nominal Values (Not Adjusted for Inflation)

Figure is interactive in the HTML version of this report.



Source: CRS using information from SEC 10-K Forms.

Notes: The revenue reported for each year is from the SEC 10-K form of that year, which may differ from the revenue reported for that year in subsequent SEC 10-K forms. The end of the fiscal year is in September for Apple, June for Microsoft, and December for Alphabet, Amazon, and Meta Platforms.

Potential Enforcers

The United States does not have a single federal agency designated to promulgate regulations specifically for online platforms. However, some federal agencies that enforce laws applicable to online platforms and other entities have taken action against companies for allegedly violating these laws.

If Congress seeks to enact legislation directed to online platforms, it may specify who would be responsible for enforcing the legislation. Congress could allow federal agencies or state attorneys general to sue operators of online platforms to enforce the law, or create a private right of action allowing individual lawsuits. If Congress chooses to designate a federal agency, it might consider and clearly specify the amount of discretion and authority given to the agency.⁷⁶

Some Members of Congress have proposed designating the FCC,⁷⁷ the Federal Trade Commission (FTC),⁷⁸ or a newly established agency to enforce legislation directed to online platforms.⁷⁹ The appropriate agency may depend on the specifics of the legislation. This section provides some general considerations for establishing a new agency and regarding existing authorities and responsibilities of the FCC and FTC.

Federal Communications Commission

Some Members of Congress have proposed designating the FCC to enforce legislation related to online platforms.⁸⁰ The FCC regulates interstate and international communications by radio, television, wire, satellite, and cable.⁸¹ It has not taken regulatory actions toward online platforms, although it has considered clarifying ambiguities in Section 230 with rulemaking.⁸²

The FCC might not have the authority to issue regulations on Section 230 or online platforms.⁸³ If Congress wants the FCC to promulgate regulations on Section 230 or online platforms, it might need to explicitly provide the FCC with the authority to do so in legislation. Furthermore, given that the FCC has not taken regulatory actions toward online platforms, Congress might consider whether the FCC would need additional resources to fulfill any new regulatory role.

The FCC has oversight over companies that offer services similar to those offered by certain online platforms. For example, the FCC has recognized online video distributors—including video streaming services—as competitors to broadcast television stations and multichannel video

⁷⁶ Courts may challenge an agency's actions if the issues addressed by the agency are of major national significance and not supported by clear congressional authorization. See CRS In Focus IF12077, *The Major Questions Doctrine*, by Kate R. Bowers.

⁷⁷ For example, see the 21st Century FREE Speech Act (H.R. 7613, S. 1384, 117th Congress).

⁷⁸ For example, see the Digital Services Oversight and Safety Act (H.R. 6796, 117th Congress).

⁷⁹ For example, see the Digital Platform Commission Act of 2023 (S. 1671, 118th Congress).

⁸⁰ For example, see the Big Tech Accountability for Broadband Act (H.R. 4905, 117th Congress).

⁸¹ FCC, "What We Do," at <https://www.fcc.gov/about-fcc/what-we-do>. For more information about the FCC, see CRS Report R45699, *The Federal Communications Commission: Structure, Operations, and Budget*, by Patricia Moloney Figliola.

⁸² On October 15, 2020, former FCC Chair Ajit Pai released a statement that the FCC would move forward with rulemaking to clarify §230's meaning (FCC, "Statement of Chairman Pai on Section 230," October 15, 2020, at <https://docs.fcc.gov/public/attachments/DOC-367567A1.pdf>). The FCC did not move forward with rulemaking prior to his departure, or subsequently.

⁸³ For more information about the FCC's legal authority, see "FCC" section in CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

programming distributors.⁸⁴ While broadcast television stations and multichannel video programming distributors receive some oversight from the FCC, online video distributors do not.

In addition, some companies offer multiple products, some of which receive oversight from the FCC, while other products do not. For example, Comcast is an internet service provider (ISP), operates the broadcast television station NBC, and offers certain voice services—all of which receive some level of oversight from the FCC—in addition to operating the video streaming service Peacock, which does not receive oversight from the FCC. Congress might consider the relationships across various products, such as whether certain products rely on others and differences across products, in determining whether the FCC might be best suited to enforce legislation or another agency.

Federal Trade Commission

Some Members of Congress have proposed designating the FTC to enforce legislation related to online platforms.⁸⁵ The FTC enforces federal laws preventing unfair methods of competition and unfair or deceptive acts or practices (UDAP) in or affecting commerce.⁸⁶ Under its competition and consumer protection authority, the FTC has filed suit against multiple companies that operate online platforms.⁸⁷ The FTC has used its investigative authority to collect information about online platforms,⁸⁸ including providers of social media and video streaming services,⁸⁹ and published reports on related issues.⁹⁰ The FTC released a statement in October 2021 that it was “aggressively hiring Technologists to help drive the agency’s work,”⁹¹ and it launched a new Office of Technology in February 2023.⁹²

⁸⁴ For example, see FCC, *In the Matter of Communications Marketplace Report*, GN Docket No. 22-203, adopted and released December 30, 2022, at <https://www.fcc.gov/reports-research/reports/consolidated-communications-marketplace-reports/CMR-2022>.

⁸⁵ For example, see Platform Accountability and Transparency Act (S. 1876, 118th Congress).

⁸⁶ 15 U.S.C. §45. For more information about the Federal Trade Commission’s (FTC’s) enforcement authority for unfair or deceptive acts or practices (UDAP), see CRS In Focus IF12244, *Unfair or Deceptive Acts or Practices (UDAP) Enforcement Authority Under the Federal Trade Commission Act*, by Eric N. Holmes.

⁸⁷ For example, under its UDAP enforcement authority, the FTC filed suit and reached a settlement with Meta Platforms (formerly Facebook, Inc.), which allegedly deceived consumers about its privacy policy and subsequently violated a 2012 consent order (see FTC, “Facebook, Inc., In the Matter of,” last updated July 13, 2023, at <https://www.ftc.gov/legal-library/browse/cases-proceedings/092-3184-182-3109-c-4365-facebook-inc-matter>). The FTC also filed suit against Meta Platforms under its competition authority for allegedly engaging in anticompetitive conduct to maintain its personal social networking monopoly (see FTC, “Facebook, Inc., FTC v.,” last updated November 17, 2021, at <https://www.ftc.gov/legal-library/browse/cases-proceedings/191-0134-facebook-inc-ftc-v>).

⁸⁸ §6(b) of the FTC Act authorizes the agency to “prescribe annual or special, or both annual and special, reports or answers in writing to specific questions” among businesses that affect commerce, with some exceptions; see 15 U.S.C. §46(b).

⁸⁹ FTC Division of Privacy and Identity Protection, “6(b) Orders to File Special Reports to Social Media and Video Streaming Service Providers,” December 2020, at <https://www.ftc.gov/reports/6b-orders-file-special-reports-social-media-video-streaming-service-providers>.

⁹⁰ For example, see FTC, “Combating Online Harms Through Innovation,” FTC Report to Congress, June 16, 2022, at <https://www.ftc.gov/reports/combating-online-harms-through-innovation>.

⁹¹ FTC, “Ethics FAQs for FTC Technologists,” October 26, 2021, at <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2021/10/ethics-faqs-ftc-technologists>.

⁹² FTC, “FTC Launches New Office of Technology to Bolster Agency’s Work,” press release, February 17, 2023, at <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-launches-new-office-technology-bolster-agencys-work>.

Congress has given the FTC authority to enforce multiple federal statutes under its consumer protection authority. Some of these laws apply to certain online platforms,⁹³ and others are unrelated to the internet.⁹⁴ The FTC determines how to allocate its resources to address the different statutes it enforces, which may involve prioritizing certain issues over others. In April 2023, FTC Chair Lina Khan testified that the agency is requesting an increase in funding, which would be offset by merger filing fees, to meet increased demands on the agency.⁹⁵

Some Members of Congress have proposed creating a separate division or taskforce within the FTC to address issues related to online platforms.⁹⁶ If Congress chooses to do so, it might specify the division's responsibilities and consider how they would fit within the FTC's competition and consumer protection responsibilities. Congress also could consider whether it might seek to specify separate funding for the division.

New Agency

Some Members of Congress have proposed creating a new agency to enforce legislation related to online platforms.⁹⁷ The agency could be staffed with individuals with expertise in software engineering, data science, and other disciplines, depending on the issues Congress wants it to address. Congress may also consider how much funding would be sufficient for the agency to fulfill its responsibilities.

One consideration may be the jurisdiction provided to the agency, which may overlap with other agencies, particularly for online platforms offering services that receive oversight from other federal agencies. For example, some online platforms that offer certain consumer financial products and services might receive oversight from the Consumer Financial Protection Bureau.⁹⁸ In addition, Congress might consider the new agency's roles in the enforcement of laws—such as antitrust and consumer protection laws—that are under the jurisdiction of other agencies.

Regulatory Regime

Some Members of Congress have proposed creating a regulatory regime for online platforms under which a federal agency would promulgate regulations to address various issues. For example, a federal agency could create requirements to ensure transparency of content moderation policies and to assess the risk of the distribution of harmful content.⁹⁹

Depending on the authorities given to the regulator, it might be able to address multiple issues and adapt to technological changes.¹⁰⁰ For example, if an agency is given general authority to

⁹³ For example, the FTC enforces the Children's Online Privacy Protection Act (COPPA; 15 U.S.C. §§6501-6506) and INFORM Consumers Act (15 U.S.C. §45f).

⁹⁴ For example, the FTC enforces the Wool Products Labeling Act (15 U.S.C. §§68-68j).

⁹⁵ Testimony of FTC Chair Lina Khan, in U.S. Congress, House Committee on Appropriations, Subcommittee on Financial Services and General Government, *Fiscal Year 2024 Request for the Federal Trade Commission*, hearings, 118th Cong., 1st sess., April 27, 2023, at <https://docs.house.gov/meetings/AP/AP23/20230427/115772/HHRG-118-AP23-TTF-KhanL-20230427.pdf>.

⁹⁶ For example, see Algorithmic Justice and Online Platform Transparency Act (H.R. 4624, 118th Congress).

⁹⁷ For example, see the Digital Platform Commission Act of 2023 (S. 1671, 118th Congress). The bill uses the term *digital platform*, but based on the definition, this report considers it to be the same as an "online platform."

⁹⁸ For more information about Consumer Financial Protection Bureau's oversight of consumer financial products, see CRS Report R47475, *Consumer Finance and Financial Technology (Fintech)*, coordinated by Cheryl R. Cooper.

⁹⁹ For example, see Digital Platform Commission Act of 2023 (S. 1671, 118th Congress).

¹⁰⁰ Tom Wheeler, Phil Verveer, and Gene Kimmelman, *New Digital Realities, New Oversight Solutions in the U.S.*: (continued...)

promulgate regulations for online platforms, it may be able to adjust regulations as companies develop new technologies. If, however, the regulations require systems that are costly and time-intensive to implement, it could provide an advantage for existing companies that have developed these systems or large companies that have the resources to do so. Furthermore, certain regulations might entrench existing market structures, reduce innovation, or lead to inefficiencies.¹⁰¹

If Congress chooses to pursue a regulatory regime, some considerations may include

- **Potential effects of regulation.** Implementing regulations to address one set of issues could exacerbate others. For example, regulations creating safety requirements to address harms associated with online platforms might be difficult for nascent and small firms to implement, depending on the requirements, which could reduce competition.
- **The amount of authority to give the regulator.** While Congress would need to determine what the law requires and/or prohibits, it could direct the agency to create nonbinding guidelines or provide the agency with rulemaking authority, providing the agency with broad authorities or specific requirements.¹⁰²

Selected Issues in Proposed Legislation

Some Members of Congress have introduced bills related to online platforms, some of which would create requirements specifically for online platforms.¹⁰³ This section analyzes three main issues addressed by some of these bills: transparency, content moderation, and competition. It is unclear how legislation affecting one of these issues might affect the others. For example, increasing competition may or may not result in changes in levels of transparency or content moderation practices offered by different platforms.

Transparency Requirements

Some operators of online platforms use technologies and systems to send targeted ads, analyze data, and prioritize and remove certain content, among other uses. Detailed information about these technologies and systems typically are not publicly available. Some Members of Congress have questioned whether increased transparency on how companies operate their platforms could help inform debate and legislation, and provide consumers with greater insight into the operations of online platforms and the effects of these platforms.

The Case for a Digital Platform Agency and a New Approach to Regulatory Oversight, Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy, August 2020, at https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities_August-2020.pdf; and Government of the United Kingdom, HM Treasury, Unlocking Digital Competition: Report of the Digital Competition Expert Panel, March 2019, at <https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel>.

¹⁰¹ Luis Cabral, “Merger Policy in Digital Industries,” *Information Economics and Policy*, vol. 54 (March 2021), pp. 1-7, at <https://doi.org/10.1016/j.infoecopol.2020.100866>; and Jonathan B. Baker, “Protecting and Fostering Online Platform Competition: The Role of Antitrust Law,” *Journal of Competition Law and Economics*, vol. 17, no. 2 (2021), pp. 493-501, at <https://doi.org/10.1093/joclec/nhaa032>.

¹⁰² For more information about federal rulemaking, see CRS In Focus IF10003, *An Overview of Federal Regulations and the Rulemaking Process*, by Maeve P. Carey.

¹⁰³ As noted, this report focuses on bills introduced in the 117th and 118th Congresses. All of the bills are discussed in the present tense.

Some bills would require companies to publish transparency reports or provide independent researchers access to platform data.¹⁰⁴ Other bills would direct a federal agency or a taskforce consisting of individuals from multiple federal agencies to conduct studies on online platforms.¹⁰⁵ Some of the bills focus on increasing transparency for specific data—such as political ads—or would require companies to retain specific information, such as personal information used in algorithms or results from assessing the impact and risk associated with the platform.¹⁰⁶

Proposed transparency requirements generally focus on making information about an online platform available to others, although the information that is of interest can vary depending on the platform. For example, transparency into social media platforms may center on content moderation policies, such as how moderators are instructed to remove or allow certain content. This may be less relevant for other platforms that do not have content moderation policies or moderators.

Other forms of transparency—such as information about the algorithms or AI systems used—may be applicable across online platforms. Although some companies publish general descriptions of inputs used in their systems,¹⁰⁷ detailed information on the AI systems or algorithms are typically not publicly available. While this detailed information could, for example, inform future legislation, transparency requirements would not necessarily require companies to implement changes. They could, however, *incentivize* companies to implement changes, particularly if user engagement on the platform declines or individuals stop using the platform after the company's disclosure. Furthermore, some companies might choose to stop offering certain products or services if the transparency requirements are expensive or difficult to comply with, among other factors.¹⁰⁸

Discussions on increasing transparency raise the question, transparency for whom? Congress may consider who would benefit from having access to what type of information if it chooses to pursue legislation to increase transparency. For example, companies could be required or encouraged to provide specific information to

- **Users.** Some research has found that consumers have limited insight into the business practices and operations of online platforms—such as how platforms use consumer data, recommend products, prevent fraud, and target digital advertisements.¹⁰⁹ Although transparency requirements may inform consumers

¹⁰⁴ For example, see the Algorithmic Justice and Online Platform Transparency Act (H.R. 4624, 118th Congress); Platform Accountability and Transparency Act (S. 1876, 118th Congress).

¹⁰⁵ For example, see the Federal Social Media Research Act (S. 410, 118th Congress); Digital Services Oversight and Safety Act of 2022 (H.R. 6796, 117th Congress).

¹⁰⁶ For example, see the Algorithmic Justice and Online Platform Transparency Act (H.R. 4624, 118th Congress); Honest Ads Act (H.R. 2599, S. 486, 118th Congress).

¹⁰⁷ For example, see Google, “How Results are Automatically Generated,” Google Search, accessed on July 7, 2023, at <https://www.google.com/search/howsearchworks/how-search-works/ranking-results/>; and Google, “Google Open Source,” accessed on July 7, 2023, at <https://cs.opensource.google/>.

¹⁰⁸ For example, Google stopped accepting political ads in Maryland after the state passed a law requiring certain online platforms to maintain databases of all Maryland political ads. The law was found to be unconstitutional. Ovetta Wiggins and Tony Romm, “Maryland Pioneers State Regulation of Online Political Advertising,” *Washington Post*, July 3, 2018, at https://www.washingtonpost.com/local/md-politics/maryland-pioneers-state-regulation-of-online-political-advertising/2018/07/03/5fe1fc32-7ebd-11e8-b660-4d0f9f0351f1_story.html; and Walter Olson, “Laws Regulating Political Ads Violates First Amendment,” *Baltimore Sun*, December 12, 2019, at <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1212-electronic-political-ads-20191211-x3hv7uro3zgvvigofoev5jvbdwq-story.html>.

¹⁰⁹ Consumer Reports, *Platform Perceptions: Consumer Attitudes on Competition and Fairness in Online Platforms*, (continued...)

about company practices, they may not necessarily enable consumers to change their online behavior, even if they would want to. For example, alternative platforms that offer the same services might not exist, and network effects might compel users to remain on the platform.

- **Third-party researchers and auditors.** Many academic and third-party researchers lack access to the internal data, models, and other information that could be needed to conduct comprehensive studies of online platforms. These studies could provide insight into online platforms and their effects on users. One consideration may be what information third-party researchers and auditors would need to access to conduct comprehensive studies while ensuring privacy protections of users' data and the protection of companies' intellectual property. Some considerations for Congress might include who should be able to access the data, how researchers could access the data, what type of data companies would need to share, what information researchers would be required to protect, and what information researchers would be permitted to disclose.
- **Federal agencies.** Companies might be less concerned about exposing proprietary information if they were required to provide information only to a federal agency with certain safeguards. Some considerations may include what specific information online platforms would have to submit, which agencies have relevant authorities or might need new authorities to review and handle these disclosures, and what agencies would be allowed to do with submitted documentation and information.

Content Moderation

Operators of online platforms can determine what type of content to host on their platforms and how to display it. Information describing a platform's practices is often shared with users through content moderation policies, particularly for platforms that consist primarily of user-generated content. Operators are not required to provide this information and can change or remove their policies as they see fit without informing users.

Some bills may affect content moderation practices of online platforms by addressing the publication,¹¹⁰ removal,¹¹¹ and display order of online content.¹¹² These bills seek to amend or repeal Section 230 or create requirements on the methods used to moderate content.

Amending or Repealing Section 230

Section 230 generally precludes interactive computer service providers and users from being held liable for publishing, and in some instances restricting access to, third-party content.¹¹³ It does not protect operators or users for content they develop. Operators of online platforms have used Section 230, when applicable, to obtain early dismissals of legal claims and avoid the application

2020, at <https://advocacy.consumerreports.org/wp-content/uploads/2020/09/FINAL-CR-survey-report.platform-perceptions-consumer-attitudes-.september-2020.pdf>.

¹¹⁰ For example, see the Health Misinformation Act of 2021 (S. 2448, 117th Congress).

¹¹¹ For example, see the Stop the Censorship Act (H.R. 8612, 117th Congress).

¹¹² For example, see the DISCOURSE Act (S. 921, 118th Congress).

¹¹³ 47 U.S.C. §230.

of some regulations in certain situations.¹¹⁴ Some bills would amend or repeal Section 230 to limit the liability protection it provides.¹¹⁵ Given the broad definition of *interactive computer service*, amending or repealing Section 230 would affect online platforms in addition to other entities, such as libraries and ISPs, unless specified otherwise.¹¹⁶

Changing the scope of federal immunity provided by Section 230 could change legal incentives for platform operators and users. Amending Section 230 protections would not *require* operators to change their online platforms, but some operators might implement changes in response to the possibility or result of litigation. If providers or users could be subject to a lawsuit for a certain action, they might choose not to engage in that action, although a number of factors might go into that decision. For example, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA, P.L. 115-164) amended Section 230 to remove liability protection for certain sex trafficking offenses,¹¹⁷ which led some companies to remove sections of platforms to avoid potential litigation.¹¹⁸

Depending on the legislation, operator responses might range from aggressively restricting access to content to allowing all legal speech, including content that may be considered objectionable by most users. Others might choose not to host user-generated content. Some platforms, particularly those operated by smaller companies, might not have the resources to address legal challenges. Furthermore, although amending Section 230 may limit operators' ability to obtain an early dismissal of certain legal claims, some of their actions may still be protected under the First Amendment.¹¹⁹

Requirements for Content Moderation

Some bills seek to prevent platforms from removing lawful content or require the removal of certain harmful content.¹²⁰ Legislation creating requirements for specific types of content or regulating content moderation could raise First Amendment concerns,¹²¹ as discussed in more detail in other CRS products.¹²² Thus, most bills intended to address content moderation practices would implement transparency requirements, procedural requirements, and technical changes to the methods used to moderate content.

¹¹⁴ For more information, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

¹¹⁵ For example, see the AOC Act (H.R. 874, 117th Congress); CASE-IT Act (H.R. 573, 118th Congress).

¹¹⁶ For the definition of *interactive computer service* and considerations for defining subsets of online platforms, see section "Covered Entities."

¹¹⁷ P.L. 115-164. For more information, see CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

¹¹⁸ David McCabe and Kate Conger, "Stamping Out Online Sex Trafficking May Have Pushed It Underground," *New York Times*, December 17, 2019, at <https://www.nytimes.com/2019/12/17/technology/fosta-sex-trafficking-law.html>; and Tom Jackman, "Trump Signs 'FOSTA' Bill Targeting Online Sex Trafficking, Enables States and Victims to Pursue Websites," *Washington Post*, April 11, 2018, at <https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/>.

¹¹⁹ For more information, see "Free Speech Considerations" in CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes.

¹²⁰ For example, see the Kids Online Safety Act (S. 1409, 118th Congress).

¹²¹ CRS In Focus IF12308, *Free Speech: When and Why Content-Based Laws Are Presumptively Unconstitutional*, by Victoria L. Killion.

¹²² For example, see CRS In Focus IF12180, *False Speech and the First Amendment: Constitutional Limits on Regulating Misinformation*, by Valerie C. Brannon.

Moderation Transparency Requirements

Some bills would require operators to provide specific information related to their content moderation practices. For example, some bills would require certain companies to publish aggregate statistics on their moderation practices—such as how much and what type of content is removed from the platform—in biannual transparency reports.¹²³ Some companies publish semi-regular reports on their moderation practices.¹²⁴ These reports are voluntary, meaning these companies could stop publishing them. Further, they might not include information that Congress deems necessary or useful to address its concerns. The considerations discussed in “Transparency Requirements,” such as who should have access to what information and potential responses from companies, may be applicable to increasing transparency related to content moderation practices.

Procedural Requirements for Moderation

Some bills would create procedural requirements for online platforms that moderate user-generated content, such as requiring companies to maintain a complaint system that allows users to appeal content moderation decisions.¹²⁵ These systems could provide users with an avenue for recourse if their content were removed. Some bills would require companies to notify users when their content is removed, limited in visibility, or otherwise affected by moderation decisions.¹²⁶ However, state laws that create disclosure and procedural requirements for content moderation—such as those passed in Texas and Florida—have faced First Amendment challenges; the cases are ongoing.¹²⁷

Technical Requirements and User Controls

Some bills would require companies to make changes to the technologies and systems used on platforms to provide users with greater control of content moderation (i.e., user controls). For example, some bills would require companies to offer separate versions of their platform, such as a version that uses personal information to recommend content and one that does not.¹²⁸ Similarly, some bills would require companies to provide minors the ability to “turn off” recommended content; that is, stop the platform from recommending content to the user.¹²⁹ These user controls could include other options, such as limiting data collection or choosing the level of content moderation.

Congress may consider the ability of companies to comply with certain technical requirements, particularly for smaller and nascent platforms, and whether consumers would be able to exercise full autonomy over user controls. Companies may respond to these requirements by

¹²³ For example, see the Social Media NUDGE Act (S. 3608, 117th Congress).

¹²⁴ For example, Meta publishes “transparency reports” on its enforcement of community standards, copyright and trademark infringement, and government requests of user data, among other topics, for Facebook and Instagram. See Meta, “Transparency Reports,” Transparency Center, at <https://transparency.fb.com/data/>.

¹²⁵ For example, see the Digital Services Oversight and Safety Act of 2022 (H.R. 6796, 117th Congress).

¹²⁶ For example, see the Internet PACT Act (S. 483).

¹²⁷ CRS Legal Sidebar LSB10748, *Free Speech Challenges to Florida and Texas Social Media Laws*, by Valerie C. Brannon.

¹²⁸ For example, see the Filter Bubble Transparency Act (S. 2024, 117th Congress).

¹²⁹ For example, see the Kids Online Safety Act (S. 1409, 118th Congress).

implementing designs that trick or manipulate users into making certain choices (i.e., dark patterns) to influence how consumers utilize mandated user controls.¹³⁰

Competition

Some online platforms attract a large number of users for certain products and services. For example, a large number of users rely on TikTok, Facebook, and Instagram for social media, Amazon for online marketplaces, and Google for search engines (**Table 1**).

These dominant online platforms have led some policymakers to consider whether there is sufficient competition. While their dominance may be partially attributable to certain characteristics of online platforms, as discussed above in “Online Platform Concepts and Characteristics,” some policymakers have stated that certain actions by companies that operate these platforms have contributed to their dominance. For example, President Biden stated in his Executive Order that, “a small number of dominant Internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage.”¹³¹

Some bills seek to increase competition by (1) increasing funding for federal antitrust enforcers,¹³² (2) creating competition rules specifically for online platforms,¹³³ and (3) amending antitrust laws.¹³⁴

Funding for Antitrust Enforcers

Two federal agencies have broad responsibility for enforcing federal antitrust laws—the FTC and the Department of Justice’s (DOJ’s) Antitrust Division.¹³⁵ The 117th Congress enacted the Merger Filing Fee Modernization Act of 2022, which adjusted fees paid by merging firms.¹³⁶ The law is expected to increase the amount of money collected through these fees, although that will depend on the number and size of mergers filed.¹³⁷ The fees are divided evenly between the FTC and

¹³⁰ Examples of dark patterns include pre-checked boxes and confusing cancellation policies. For more information, see CRS In Focus IF12246, *What Hides in the Shadows: Deceptive Design of Dark Patterns*, by Kristen E. Busch and FTC, *Bringing Dark Patterns to Light*, FTC staff report, September 2022, at <https://www.ftc.gov/reports/bringing-dark-patterns-light>.

¹³¹ E.O. 14036, “Promoting Competition in the American Economy,” 86 *Federal Register* 36987.

¹³² For example, see the Prohibiting Anticompetitive Mergers Act of 2022 (H.R. 7101; S. 3847, 117th Congress).

¹³³ For example, see the American Innovation and Choice Online Act (S. 2992; H.R. 3816, 117th Congress).

¹³⁴ For example, see the Competition and Antitrust Law Enforcement Reform Act of 2021 (S. 225, 117th Congress). For an analysis of the changes some of the proposals would make to antitrust laws, see CRS Report R46875, *Antitrust Reform and Big Tech Firms*, by Jay B. Sykes.

¹³⁵ Antitrust laws are also enforced by state attorneys general and, in certain cases, private parties can challenge mergers. For more information, see M. Sean Royall and Adam J. Di Vincenzo, “When Mergers Become a Private Matter: An Updated Antitrust Primer,” *Antitrust*, vol. 26, no. 2 (Spring 2012), pp. 41-46, at <https://www.gibsondunn.com/wp-content/uploads/documents/publications/WhenMergersBecomePrivateMatter-AntitrustPrimer-Royall-DiVincenzo0312.pdf>.

¹³⁶ P.L. 117-328, Division GG, Title I, §301; amended 15 U.S.C. §18a notes. For 2023, the law reduced the fees collected for smaller transactions (less than \$1 billion) and increased the fees for larger transactions by expanding the brackets. The filing fees will be adjusted each year according to the percentage increase in the Department of Labor’s Consumer Price Index.

¹³⁷ The Congressional Budget Office (CBO) estimated that H.R. 3843 and S. 228 (117th Congress)—which have the same merger filing fee adjustments as the enacted legislation—would generate over \$1.4 billion in revenue from 2023 to 2027 (see CBO, “H.R. 3843, Merger filing Fee Modernization Act of 2021,” *CBO Cost Estimate*, September 27, 2022, at <https://www.cbo.gov/publication/58527>).

DOJ's Antitrust Division, credited under "Salaries and Expenses" to the amount allocated through appropriations; the fees "shall remain available until expended."¹³⁸

Increasing funding for the FTC and DOJ's Antitrust Division could increase antitrust enforcement. Both antitrust enforcers requested an increase in funding for FY2024 compared with FY2023 enacted levels to assist with a historical spike in enforcement activity and merger filings.¹³⁹ The types of investigations and lawsuits pursued depend in part on the commissioners of the FTC and the DOJ Antitrust Division's Assistant Attorney General. Furthermore, the outcomes of actions taken by the antitrust enforcers depend on decisions of federal courts, which may find that a company's actions do not violate existing antitrust laws.

Competition Rules for Online Platforms

Some bills would create separate competition rules for online platforms. Some of these rules would prohibit certain conduct, such as platforms prioritizing their own products or disadvantaging competitors' products (i.e., self-preferencing),¹⁴⁰ and others would require certain conduct, such as making platforms interoperable.¹⁴¹ The bills would typically apply their rules only to large online platforms.

One consideration is whether online platforms need separate competition rules. Some of the proposed competition rules could be applicable to other entities. For example, brick-and-mortar retailers can also self-preference products, such as by offering discounts and not carrying competitors' products. Some of these actions can benefit consumers, while others might be discouraged by other factors, such as the need to attract consumers to the store or platform.¹⁴² However, some characteristics of online platforms—including network effects and value from access to large amounts of consumer data—can create barriers to entry that entrench dominant platforms.¹⁴³ These problems may be unique to online platforms.

It is unclear whether some of the proposed competition rules alone would address the aforementioned barriers to entry. For example, interoperability could help address network effects by providing new and smaller platforms access to users and reduce the cost for users to switch platforms. However, even if platforms were interoperable, users might not switch from an existing platform to a new platform. Some users may feel less compelled to switch platforms if, on the platform they currently use, they can communicate with and view content from users of the new platform. Furthermore, to attract users, a new platform may offer different features or

¹³⁸ "Assessment and Collection of Filing Fees" in 15 U.S.C. § 18a notes.

¹³⁹ The DOJ's Antitrust Division requested a \$66 million (29%) increase in funding and an increase of 182 (21%) full-time employees for FY2024 compared with FY2023 enacted levels (see DOJ's FY2024 Performance Budget Congressional Justification Submission, at https://www.justice.gov/d9/2023-03/atr_fy_2024_pb_narrative_omb_cleared_03.13.23.pdf). The FTC requested a \$160 million (37%) increase in funding and an increase of 310 (22%) full-time employees for FY2024 compared with FY2023 enacted levels (see FTC Congressional Budget Justification for FY2024, at https://www.ftc.gov/system/files/ftc_gov/pdf/p859900fy24cbj.pdf).

¹⁴⁰ For example, see the American Innovation and Choice Online Act (S. 2992; H.R. 3816, 117th Congress).

¹⁴¹ For example, see the ACCESS Act of 2021 (H.R. 3849, 117th Congress). For an analysis of these competition rules, see CRS Report R46875, *Antitrust Reform and Big Tech Firms*, by Jay B. Sykes.

¹⁴² Federico Etro, "Product Selection in Online Marketplaces," *Journal of Economics and Management Strategy*, vol. 30, issue 3 (2021), pp. 614-637.

¹⁴³ House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, *Investigation of Competition in Digital Markets*, 2020, at https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf; and "Market Structure and Antitrust Subcommittee Report," *Stigler Committee on Digital Platforms*, The University of Chicago Booth School of Business, Stigler Center, September 2019, at <https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report>. For more information, see section "Online Platform Concepts and Characteristics."

services, which the incumbent may be able to copy more easily, depending on the interoperability requirements.¹⁴⁴

Some bills would apply competition rules only to large online platforms. A large platform with more resources and users may have a greater effect on the market and foreclose competition more easily. However, platforms that might not be considered “large” could engage in conduct prohibited in the proposed competition rules to obtain market power. A platform may be dominant by the time it is “large,” making it difficult for a competitor to be viable. A consideration may be whether competition rules should apply to platforms that are not considered “large.” For instance, if certain actions are always anticompetitive, Congress might consider whether those actions should be prohibited for all platforms, regardless of size. Complex technological and economic systems, however, can create uncertainties about the competitive effects of most, if not all, actions. Congress, therefore, might consider whether operators’ actions should be examined on a case-by-case basis.

Amending Antitrust Laws

Antitrust laws aim to protect economic competition by prohibiting certain conduct, specifically unreasonable restraints of trade,¹⁴⁵ exclusionary conduct by dominant firms,¹⁴⁶ and mergers and acquisitions that may “substantially” lessen competition or “tend to create a monopoly.”¹⁴⁷ Antitrust laws are typically enforced on a case-by-case basis, which can be costly and time-intensive.¹⁴⁸

Some bills would amend antitrust laws. For example, some bills would prohibit firms that meet specific criteria—such as a market share greater than 50%—from acquiring a competitor, unless the merging parties can establish that the acquisition would not “create an appreciable risk of materially lessening competition.”¹⁴⁹ This would both alter the standard for prohibited mergers, from those that may “substantially” lessen competition to those creating “an appreciable risk of materially lessening competition,” and shift the burden of proof from antitrust enforcers to merging parties.

Amending antitrust laws could have a significant effect on firms across industries, not only online platforms. If Congress disagrees with rulings made by courts or would like to see greater antitrust enforcement, it could amend antitrust laws to clarify the types of conduct it considers anticompetitive or lower the burden on antitrust enforcers. However, depending on the amendments, firms may be discouraged from engaging in conduct that, in some instances, can increase competition. For example, shifting the burden of proof to merging parties could discourage some firms from entering mergers, which could increase or decrease competition, depending on the market and parties involved.¹⁵⁰

¹⁴⁴ For more information on potential benefits, risks, and limitations of interoperability, see OECD, *Data Portability, Interoperability, and Digital Platform Competition* (2021), at <https://www.oecd.org/daf/competition/data-portability-interoperability-and-digital-platform-competition-2021.pdf>.

¹⁴⁵ 15 U.S.C. §1.

¹⁴⁶ 15 U.S.C. §2.

¹⁴⁷ 15 U.S.C. §18.

¹⁴⁸ For an overview of antitrust laws, see CRS In Focus IF11234, *Antitrust Law: An Introduction*, by Jay B. Sykes. For an in-depth discussion and analysis of selected bills amending antitrust laws, see CRS Report R46875, *Antitrust Reform and Big Tech Firms*, by Jay B. Sykes.

¹⁴⁹ For example, see the Competition and Antitrust Law Enforcement Reform Act of 2021 (S. 225, 117th Congress).

¹⁵⁰ For an in-depth discussion of potential effects of mergers, see CRS Report R46739, *Mergers and Acquisitions in Digital Markets*, by Clare Y. Cho.

Further Considerations for Congress

As states and other countries implement their own regulations related to online platforms, Congress might consider the role of federal legislation. In deciding whether to enact legislation and what provisions to include, Congress might consider the following:

- **Potential effects on users.** Online platforms can benefit and harm users depending, for example, on the types of communications received or the ways platforms are used.¹⁵¹ Legislation intended to address some of the harms might unintentionally create new problems. It could also make creating an online platform more difficult and costly, which could further entrench incumbents and limit the development of new platforms that could benefit users. However, without legislation, some operators might make temporary changes while receiving public scrutiny. Some operators might not have an incentive to maintain any changes, particularly if doing so would incur a cost.
- **Complications of technological development.** Companies and individuals may be able to integrate and use new technologies on online platforms in ways that developers did not anticipate. This can create opportunities for innovation, as well as increase risks of harms, particularly as more devices are connected to the internet. For example, generative AI could help developers create or improve products and services offered on online platforms, but could also exacerbate existing concerns related to online platforms and create new ones.¹⁵² Furthermore, some of these technologies can be costly to develop; companies that have invested in the underlying technologies and infrastructure may have a competitive advantage.
- **Complications of decentralization.** Some developers have started implementing decentralized systems to operate online platforms, such as Bluesky, ActivityPub, and Mastodon.¹⁵³ These systems use open-source software (i.e., software that can be viewed and modified by the public) that allows users to build peer-to-peer networks.¹⁵⁴ Although the long-term feasibility and popularity of these platforms is unclear, these systems raise a question of whether Congress might want to address selected companies and platforms or implement broader rules that would be applicable to all individuals and entities on the internet. Congress could also implement legislation focused on the technology and infrastructure used to create and develop platforms.

¹⁵¹ For example, see American Psychological Association, *Health Advisory on Social Media Use in Adolescence*, May 2023, at <https://www.apa.org/topics/social-media-internet/health-advisory-adolescent-social-media-use.pdf>.

¹⁵² For more information, see CRS Report R47569, *Generative Artificial Intelligence and Data Privacy: A Primer*, by Kristen E. Busch.

¹⁵³ For information about Bluesky and Mastodon, see Amanda Silberling and Alyssa Stringer, “What is Bluesky? Everything to Know About the App Trying to Replace Twitter,” *TechCrunch*, May 5, 2023, at <https://techcrunch.com/2023/05/05/what-is-bluesky-everything-to-know-about-the-app-trying-to-replace-twitter/>; David Pierce, “Can ActivityPub Save the Internet?” *Verge*, April 20, 2023, at <https://www.theverge.com/2023/4/20/23689570/activitypub-protocol-standard-social-network>; and Amanda Silberling, “A Beginner’s Guide to Mastodon, the Open Source Twitter Alternative,” *TechCrunch*, November 8, 2022, at <https://techcrunch.com/2022/11/08/what-is-mastodon/>.

¹⁵⁴ For more information, see CRS In Focus IF12075, *Web3: A Proposed Blockchain-Based, Decentralized Web*, by Kristen E. Busch; and Jake Frankenfield, “Decentralized Applications (dApps): Definition, Uses, Pros and Cons,” Investopedia, updated April 16, 2023, at <https://www.investopedia.com/terms/d/decentralized-applications-dapps.asp>.

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