

# Regulating Big Tech: CRS Legal Products for the 118<sup>th</sup> Congress

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In [recent years](#), some Members of Congress have expressed interest in expanding regulation of the major technology companies, often referred to as “Big Tech.” Members have introduced a wide variety of proposals intended to achieve a number of distinct goals. Some proposals have focused on competition concerns and sought to amend antitrust and consumer protection laws. Some have targeted data protection and privacy. Some have focused on social media companies’ content moderation practices, addressing sometimes conflicting concerns about the circulation of harmful content and the removal of lawful content. Finally, some have weighed in on the debate over net neutrality.

At the beginning of the 118<sup>th</sup> Congress last year, [commentators](#) predicted [that](#) Congress would consider legislative action on these issues. [Commentators](#) have [forecasted](#) continued [interest](#) in 2024, including increased attention on artificial intelligence. This Legal Sidebar compiles CRS products discussing legal issues related to regulating Big Tech. The text of this Sidebar focuses on proposals to regulate Big Tech, but as the linked products discuss, some Members have also argued against these regulatory proposals. [A separate CRS report](#) more broadly discusses science and technology issues in the 118<sup>th</sup> Congress and includes links to CRS products discussing policy issues. Congressional staff may contact Valerie Brannon or the authors of the following products with questions about these issues.

## Antitrust

Antitrust laws are designed to protect economic competition. In recent years, some Members of Congress have expressed concern about the competitive practices of Big Tech firms and have introduced bills specifically addressing competition issues in the digital economy.

CRS In Focus IF11234, *Antitrust Law: An Introduction*, by Jay B. Sykes

CRS Report R46875, *Antitrust Reform and Big Tech Firms*, by Jay B. Sykes

CRS Report R47228, *The American Innovation and Choice Online Act*, by Jay B. Sykes

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## Content Moderation

Some Members of Congress have raised concerns about social media platforms' content promotion and moderation practices, meaning platforms' decisions about what user speech to host and how to present it. Members have argued variously that online platforms do not do enough to combat harmful content and that platforms take down too much lawful content. One legislative focus has been amending a federal law known as [Section 230](#), which courts have generally applied to grant platforms significant immunity for their decisions to host or restrict third-party content. Other proposals have more directly targeted specific types of harmful content or content moderation practices. These proposals may implicate constitutional free speech issues, as discussed in the following products.

### Section 230

CRS Video WVB00521, *Section 230: A Legal Primer for the 118th Congress*, by Valerie C. Brannon and Eric N. Holmes

CRS Report R46751, *Section 230: An Overview*, by Valerie C. Brannon and Eric N. Holmes

CRS Report R47753, *Liability for Algorithmic Recommendations*, by Eric N. Holmes

CRS Legal Sidebar LSB11097, *Section 230 Immunity and Generative Artificial Intelligence*, by Peter J. Benson and Valerie C. Brannon

### First Amendment

CRS Video WVB00520, *Online Content Moderation: A Legal Primer for the 118th Congress*, by Valerie C. Brannon and Eric N. Holmes

CRS In Focus IF11072, *The First Amendment: Categories of Speech*, by Victoria L. Killion

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

CRS Report R45650, *Free Speech and the Regulation of Social Media Content*, by Valerie C. Brannon

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

CRS Legal Sidebar LSB10393, *Appeals Court Says First Amendment Limits Regulation of Online Political Advertising: Implications for Congress*, by Valerie C. Brannon and L. Paige Whitaker

CRS Legal Sidebar LSB10742, *Online Content Moderation and Government Coercion*, by Valerie C. Brannon and Whitney K. Novak

CRS Legal Sidebar LSB11012, *Louisiana Court Rules on Government Communications with Social Media Companies*, by Valerie C. Brannon

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

CRS Legal Sidebar LSB11020, *Online Age Verification (Part I): Current Context*, by Eric N. Holmes

CRS Legal Sidebar LSB11021, *Online Age Verification (Part II): Constitutional Background*, by Eric N. Holmes

CRS Legal Sidebar LSB11022, *Online Age Verification (Part III): Select Constitutional Issues*, by Eric N. Holmes

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CRS Legal Sidebar LSB11071, *NetChoice v. Bonta and First Amendment Limits on Protecting Children Online*, by Peter J. Benson

CRS Report R45713, *Terrorism, Violent Extremism, and the Internet: Free Speech Considerations*, by Victoria L. Killion

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

CRS Legal Sidebar LSB10723, *Federal Civil Action for Disclosure of Intimate Images: Free Speech Considerations*, by Victoria L. Killion

## Intellectual Property

Big Tech's activities intersect with many aspects of intellectual property (IP) law. IP seeks to encourage innovation and competition by giving owners limited rights to control uses of certain kinds of inventions (through patents), confidential information (through trade secrets), creative works (through copyright), and identifiers of goods and services (through trademarks). Recently, some Members of Congress have raised questions about how IP rights may be affected by artificial intelligence (AI). These questions include whether AI programs infringe copyrights, whether AI creations can be copyrighted or patented, and whether to enact legislation to protect the right of publicity—i.e., the right to control uses of one's voice, image, and likeness—from AI imitations. Other IP issues affecting Big Tech include the Digital Millennium Copyright Act, which governs how copyright protections work online; legal protections for trade secrets; litigation and enforcement of patent rights; and debates over which types of inventions should be eligible for patent protection.

CRS In Focus IF11478, *Digital Millennium Copyright Act (DMCA) Safe Harbor Provisions for Online Service Providers: A Legal Overview*, by Kevin J. Hickey

CRS Legal Sidebar LSB10922, *Generative Artificial Intelligence and Copyright Law*, by Christopher T. Zirpoli

CRS Legal Sidebar LSB11052, *Artificial Intelligence Prompts Renewed Consideration of a Federal Right of Publicity*, by Christopher T. Zirpoli

## Data Protection and International Data Flows

Some Members of Congress have expressed concern about how Big Tech companies protect the data companies gather from users and have introduced a number of data protection bills focused on privacy and security. In recent years, the federal government has also focused on interactions with other countries—notably, working to meet standards prescribed by the European Union.

CRS In Focus IF11207, *Data Protection and Privacy Law: An Introduction*, by Stephen P. Mulligan and Chris D. Linebaugh

CRS Report R45631, *Data Protection Law: An Overview*, by Stephen P. Mulligan and Chris D. Linebaugh

CRS Legal Sidebar LSB10776, *Overview of the American Data Privacy and Protection Act, H.R. 8152*, by Jonathan M. Gaffney, Eric N. Holmes, and Chris D. Linebaugh

CRS In Focus IF12244, *Unfair or Deceptive Acts or Practices (UDAP) Enforcement Authority Under the Federal Trade Commission Act*, by Eric N. Holmes

CRS Legal Sidebar LSB10839, *FTC Considers Adopting Commercial Surveillance and Data Security Rules*, by Chris D. Linebaugh

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CRS Legal Sidebar LSB10846, *The EU-U.S. Data Privacy Framework: Background, Implementation, and Next Steps*, by Eric N. Holmes

CRS Report R46724, *EU Data Transfer Requirements and U.S. Intelligence Laws: Understanding Schrems II and Its Impact on the EU-U.S. Privacy Shield*, by Chris D. Linebaugh and Edward C. Liu

## Cross-Border Investment and Commercial Transactions

Several legal frameworks allow the United States to evaluate national security and foreign policy risks posed by private commercial transactions involving technology companies. Through export controls, economic sanctions, the Committee on Foreign Investment in the United States, and sector-specific review bodies, the executive branch has authority to review a wide range of commercial dealings, which often include tech-related transactions. Some Members of Congress and state governments have proposed expanding these frameworks to address concerns over foreign-owned technology, such as TikTok, and transactions not captured under existing structures. These proposals can raise legal issues about the programs' structure and operations.

CRS Legal Sidebar LSB11034, *National Security Review Bodies (Part I): Legal Context and Comparison*, by Steve P. Mulligan and Chris D. Linebaugh

CRS Legal Sidebar LSB11035, *National Security Review Bodies (Part II): Creating New Review Systems*, by Steve P. Mulligan

CRS In Focus IF11760, *The Information and Communications Technology and Services (ICTS) Rule and Review Process*, by Stephen P. Mulligan

CRS Report R46693, *Huawei and U.S. Law*, by Stephen P. Mulligan and Chris D. Linebaugh

CRS Legal Sidebar LSB10895, *New FCC Rules Ban Authorizations for Equipment Posing National Security Risks*, by Chris D. Linebaugh

CRS In Focus IF12415, *CFIUS Executive Order on Evolving National Security Risks and CFIUS Enforcement Guidelines*, by Cathleen D. Cimino-Isaacs, Steve P. Mulligan, and Karen M. Sutter

CRS Legal Sidebar LSB10940, *Restricting TikTok (Part I): Legal History and Background*, by Steve P. Mulligan

CRS Legal Sidebar LSB10942, *Restricting TikTok (Part II): Legislative Proposals and Considerations for Congress*, by Steve P. Mulligan and Valerie C. Brannon

CRS Legal Sidebar LSB10972, *Montana's TikTok Ban, an Injunction, and Pending Legal Actions*, by Sanchitha Jayaram and Madeline W. Donley

## Net Neutrality and Common Carrier Classification

Net neutrality generally refers to the idea that internet service providers should neither control how consumers use their networks nor discriminate among the content providers that use their networks. The Federal Communications Commission has gone back and forth on whether broadband internet access service (BIAS) should be classified as a common carrier and subject to net neutrality requirements. Members of Congress have sometimes sought to weigh in on this debate with legislative classifications of BIAS providers. Further, in recent years, some Members have suggested extending a common-carrier-like nondiscrimination obligation to social media companies.

CRS Report R46973, *Net Neutrality Law: An Overview*, by Chris D. Linebaugh

CRS In Focus IF12513, *FCC Adopts Proposed Net Neutrality Rule*, by Chris D. Linebaugh and Patricia Moloney Figliola

CRS Infographic IG10037, *FCC Regulation of Broadband Service and Action on Net Neutrality*, by Chris D. Linebaugh

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