

Sen. Warner Proposes Reforms Aimed at Social Media Companies

In the wake of recent congressional hearings on Russia's use of social media to interfere in U.S. elections, the Senate Select Committee on Intelligence (SSCI) Vice Chairman, Sen. Mark Warner (D-VA), authored a [draft white paper](#) proposing several policy changes on the use and oversight of social media platforms. Some of Warner's proposals are relatively noncontroversial, while others will likely cause angst among social media platform providers. This client alert briefly summarizes the main takeaways from Sen. Warner's thought-provoking document and highlights the ones most likely to generate further discussion on Capitol Hill.

In his paper, Sen. Warner focuses on three areas for potential reform:

1. **The depth and breadth with which social media can be easily misused.** He emphasizes the need to understand the "capacity for communication technologies to promote disinformation that undermines trust in our institutions, democracy, free press, and markets." While acknowledging that this particular threat is not new, he nevertheless warns that the new social media tools have an unprecedented power to magnify and target fake news on a scale that was until only recently unimaginable. Indeed, he cites the testimony from a March 2017 SSCI hearing of one witness who suggested that today's tools seem "almost purpose-built for Russian disinformation techniques."
2. **The lack of transparency in social media content development.** Warner suggests that as online platforms have gained a greater presence in the lives of ordinary Americans, the ability of these platforms to observe, track and even manipulate consumer behavior has also grown, thus creating important consumer benefits and consumer harm. This, he proposes, may require greater disclosure by platforms about exactly how consumer information is being collected, used and shared.
3. **The dominance of a few platforms in the social media realm.** Warner opines that the rise of a few dominant platforms may present significant problems for competition and innovation across multiple markets, including digital advertising, futures, and communications technology. In fact, Warner (along with Sen. Chuck Schumer) has [previously raised concerns](#) about how the digital advertising market operates—and these perceived competition issues only serve to heighten those concerns.

In light of these three general concerns, Warner suggests a range of policy solutions, including:

1. Mandatory identification and labeling of "bots," i.e., AI-enabled programs that, among other things, have been used to generate fake accounts on social media platforms to amplify the impact of content through mass re-postings.
2. Required identification and disclosure of the origin of posts.
3. Establishing an affirmative duty to identify inauthentic social media accounts (other than bots) based on false identities, and adding a related Securities and Exchange Commission (SEC) reporting requirement.

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4. Amend section 230 of the Communications Decency Act to make social media providers liable for state-law “dignatory” torts. Dignatory torts are torts that injure another person’s reputation or honor.
5. Mandatory disclosure requirements for online political ads, enhancing transparency and ensuring that foreign persons and corporations are not purchasing those ads. Sens. Amy Klobuchar (D-MN) and Warner have already **introduced legislation** to this effect.
6. Creation of an Interagency Task Force fostering a “whole-of-government” approach addressing the role of social media platforms, among other things, in Russia’s asymmetric attacks on our election infrastructure.

Although only a rough draft white paper now, Sen. Warner can be expected to continue to drive this issue in the 116th Congress. For additional insights on legislative proposals that may impact social media companies, contact Brownstein’s Washington, D.C., Government Relations team.

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