



July 27, 2020

The Honorable John Thune
Chairman
Senate Committee on Commerce, Science, & Transportation
Subcommittee on Communications, Technology, Innovation and the Internet
Washington, DC 20510

The Honorable Brian Schatz
Ranking Member
Senate Committee on Commerce, Science, & Transportation
Subcommittee on Communications, Technology, Innovation and the Internet
Washington, DC 20510

Re: July 28 Subcommittee Hearing: The PACT Act and Section 230: The Impact of the Law that Helped Create the Internet and an Examination of Proposed Reforms for Today’s Online World

Dear Chairman Thune and Ranking Member Schatz:

The undersigned organizations appreciate that the Subcommittee is carefully contemplating Section 230, and noting that it “helped create the Internet.” Our organizations represent a wide range of companies that depend upon intermediary protections such as Section 230 to grow in the United States and export to markets around the world. Codified at 47 U.S.C. § 230, Section 230 facilitates legal online commerce and communication, encouraging millions of entrepreneurs and businesses to flourish. Section 230 also enables the companies we represent to invest substantial time and resources in developing and maintaining content moderation policies that protect consumers and promote free expression.

The U.S. legal framework for online services is critical to American leadership in the digital economy, promoting growth and innovation across sectors. The certainty provided by this framework reduces the threat of costly, likely ruinous litigation, enabling small U.S. businesses and startups to scale up quickly.¹ Undermining foundational intermediary liability protections would cost 4.25 million American jobs and \$400 billion over the next decade, according to 2017 research.²

Intermediary liability protections also play a key role in enabling American small businesses to build trust and customer relationships in new markets. Today, millions of U.S. small businesses are taking advantage of online commerce to reach far beyond local markets, including through marketing tools and interactive customer services. However, for these tools to function,

¹ Engine, *Section 230: Cost Report* (2019), https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5c8168cae5e5f04b9a30e84e/1551984843007/Engine_Primer_230cost2019.pdf.

² Christian Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections* (NERA 2017), <http://internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>.

companies need legal certainty that they will not be held liable for all communications that arise between businesses and consumers using these tools.

Section 230 enables online services, websites, and many other digital intermediaries to maintain healthy and vibrant ecosystems. It is both a sword and shield against bad actors, limiting liability pertaining to third-party content or behavior, while also enabling services to act promptly against unlawful or injurious content or misbehavior. By protecting intermediary decisions whether content is removed or not, Section 230 encourages services to fight misconduct and protect users from online harms by removing disincentives to moderate. This helps combat online content and misbehavior that is abusive, inappropriate, or otherwise objectionable, though lawful. Narrowing this protection would have the perverse result of impeding online services' and websites' efforts to police bad actors and misconduct, including key consumer protections that users have come to expect, such as spam filtering.

Weakening Section 230 protections would be likely to produce different responses from different online services. Smaller operators may avoid moderating content at all because online services have less legal liability if they engage in no monitoring. As demonstrated in the 1995 *Stratton Oakmont* decision that Section 230 overturned, removing 99% of inappropriate content could create the appearance of endorsing the 1% that an online service overlooked. An additional outcome may be that firms would exit the market — or never enter it — which would discourage innovation and free expression by all stakeholders and viewpoints. Another likely result would be even more aggressive editorial policies. Cautious sites and services, wary of anything that could lead to risk, may only give a platform to establishment viewpoints.

Section 230 also empowers law enforcement to take actions against service providers for anything that is unlawful including any violations of federal criminal law, intellectual property law, illegal trafficking of drugs or weapons, and child protection law.³ It should go without saying that if something is illegal offline, it is also illegal online. The speaker is *always* liable for the illegal activity and the service is also liable if there is a violation of federal criminal law, IP law, or any of the other exemptions to Section 230. At the same time, if a service “is responsible in whole or in part for the creation or development” of the content, Section 230 is no protection.⁴

Thank you very much for your thoughtful consideration of these important issues. We look forward to continuing to work with you as Congress considers Section 230.

Sincerely,

Computer & Communications Industry Association
Consumer Technology Association
Engine
Internet Infrastructure Coalition

Cc: Members of the Subcommittee on Communications, Technology, Innovation and the Internet

³ See 47 U.S.C. § 230(e)(1)-(5).

⁴ *Id.* § 230(f)(3). This is what allowed the FBI to take down Backpage even before enactment of FOSTA.