Before the
Federal Communications Commission
Washington, D.C.

In the matter of	
Section 230 of the Communications Act of 1934	RM-11862

REPLY COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

Pursuant to the Federal Communications Commission (FCC)'s August 3, 2020 Public Notice,[1] the Computer & Communications Industry Association (CCIA)[2] submits the following reply comments. CCIA's reply comments respond to selected arguments made in comments by proponents of the National Telecommunications and Information Administration (NTIA)'s petition for rulemaking: the suggestion that Section 230 was enacted just to protect startups, and the claim that Section 230 treats different industries differently.

I. Section 230 Was Not a Startup-Specific Protection

Proponents of regulation contend that Section 230 was focused upon protecting small Internet services in their infancy, and that because the Internet now makes a substantial contribution to the economy and at least some firms are now well-established household names, this crucial statutory safeguard is no longer necessary.[3] Despite the fact that an untold number of

[1] Public Notice, Consumer & Governmental Affairs Bureau – Petition for Rulemakings Filed, Report No. 3157 (Aug. 3, 2020), *available at* https://docs.fcc.gov/public/attachments/DOC-365914A1.pdf.

[2] The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 45 years, to promoting innovation and preserving full, fair and open competition throughout our industry. Our members employ more than 1.6 million workers and generate annual revenues in excess of $870 billion. A list of CCIA members is available at https://www.ccianet.org/members.

[3] *See, e.g.*, Comments of AT&T Services, Inc., RM No. 11862 (Sept. 2, 2020), http://ecfsapi.fcc.gov/file/1090291808483/9.2.2020%20AT%26T%20Section%20230%20Comments.pdf (hereinafter "AT&T Comments"), at 2 ("Congress also did not foresee that such overbroad immunity would extend not only to financially vulnerable startups"); Comments of Internet Accountability Project, RM-11862 (Sept. 1, 2020), https://ecfsapi.fcc.gov/file/10902224431610/IAP%20Section%20230%20comment.pdf (hereinafter "IAP Comments"), at 1 ("This provision was enacted to protect infant technology companies near the dawn of the twenty-first century"); Comments of DigitalFrontiers Advocacy, RM-11862 (Sept. 2, 2020), https://ecfsapi.fcc.gov/file/10902180305939/200902%20DigitalFrontiers%20Advocacy%20support%20for%20sec%20230%20rulemaking%20final.pdf (hereinafter "DigitalFrontiers Comments"), at 4 ("Congress has accomplished one of its goals in passing section 230—promoting the growth of internet platforms—as internet platforms are now among the largest and most influential companies on the planet.").

small startups continue to depend upon Section 230 protection today,[4] this revisionist history lacks foundation. Section 230 was not, as some proponents suggest, solely "intended to protect struggling startups at the dawn of the internet."[5] The text of the statute makes clear that online innovation was flourishing and Congress intended "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services".[6]

Impairing Section 230 because some smaller firms have now grown runs the risk of entrenching larger firms at the expense of startups. Increased regulatory burden would disincentivize competition from new entrants. As Professor Eric Goldman has explained, "without Section 230, the marketplace would ossify, and existing legal regulations would help lock in the incumbents."[7] Furthermore, as CCIA's initial comments stated, that is a role for Congress and not the FCC. Congress enacts laws while the FCC, as any agency, is charged with promulgating regulations to implement the statute.

II. Section 230 Does Not Treat Different Industries Differently

Proponents of regulation also claim that Section 230 treats different industries differently, or is a "special carve out" for Internet companies.[8] Similarly, proponents perpetuate the misconception that Section 230 is just for so-called "platforms,"[9] when the word "platform" does not appear anywhere in the statute.[10] In reality, the statute treats firms who behave in the same way in the same fashion; every service engaged in the same function receives similar protection. Any entity functioning as an "interactive computer service" under § 230(f)(2) is eligible for

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[4] Engine, *The Importance of Strong Liability Limitations for Startups* (Sept. 3, 2020), https://www.engine.is/news/the-importance-of-strong-liability-limitations-for-startups.

[5] Joan Marsh, *The Neutrality Debate We Need to Have* (Aug. 31, 2020), https://www.attpublicpolicy.com/fcc/the-neutrality-debatewe-need-to-have/ (previewing AT&T's comments).

[6] *See* 47 U.S.C. § 230(b)(2); *see also* 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox) (explaining that Congress wanted to provide liability protections for service providers like Prodigy and CompuServe exactly because they had too many subscribers and messages to curate individual users' content).

[7] Eric Goldman, *Want to Kill Facebook and Google? Preserving Section 230 Is Your Best Hope*, Balkinization, New Controversies in Intermediary Liability Law (June 2019), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3398631, at 4.

[8] *See, e.g.*, Press Release, Sen. Mike Lee, The Facts about Google, Antitrust, and the First Amendment (June 19, 2020), https://www.lee.senate.gov/public/index.cfm/2020/6/the-facts-about-google-antitrust-and-the-first-amendment (responding to misconceptions about Section 230 by explaining that "Since Section 230 was passed two years before Google even existed it is impossible for it to be a 'special carve out Google' received from the government."); Sen. Josh Hawley (@HawleyMO), Twitter (May 27, 2020), https://twitter.com/HawleyMO/status/1265672423837401089 (suggesting Internet companies are currently "receiving the special carve out from the federal government in Section 230").

[9] *See, e.g.*, AT&T Comments *passim*; DigitalFrontiers Comments *passim*; IAP Comments *passim*.

[10] *See* 47 U.S.C. § 230.

Section 230 protection, and any entity can be considered an interactive computer service as long as it meets the broadly inclusive definition in the statute. Accordingly, Section 230 protections have applied to a host of entities that are not Internet "platforms," including universities, libraries, and news publishers, among others.[11]

Proponents also claim that online services "play by radically different liability rules than traditional purveyors of third-party content, such as book publishers, newspapers, or radio or television businesses."[12] As noted, however, courts have repeatedly found that newspapers' websites are "interactive computer services" and receive the same Section 230 protections.[13] A variety of other types of businesses and individuals — including ISPs like Comcast[14] — have regularly relied upon Section 230 in litigation.[15] Furthermore, content distributors from bookstores, to telephone companies, to radio and television broadcasters, to cable TV companies, all have extensive common law and First Amendment immunities from liability for materials they carry.

III. Conclusion

For the foregoing reasons in CCIA's comments and reply comments, the FCC should decline to issue regulations on Section 230.

Respectfully submitted,

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[11] Internet Ass'n, *A Review Of Section 230's Meaning & Application Based On More Than 500 Cases* (July 27, 2020), https://internetassociation.org/wp-content/uploads/2020/07/IA_Review-Of-Section-230.pdf, at 6.

[12] AT&T Comments at 5.

[13] *See, e.g.*, *Price v. Gannett Co.*, 2012 WL 1570972 (S.D. W. Va. May 1, 2012); *Collins v. Purdue Univ.*, 703 F. Supp. 2d 862 (N.D. Ind. 2010); *Brennerman v. Guardian News & Media Ltd.*, 2016 WL 127146 (D. Del. Mar. 30, 2016); *see also* note 11, *supra*, at 2.

[14] *E360INSIGHT, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605 (N.D. Ill. 2008).

[15] Note 11, *supra*, at 6.

CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of September, 2020, I caused a copy of the foregoing reply comments to be served via FedEx upon:

Douglas Kinkoph
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/s/ Ali Sternburg
Ali Sternburg