



September 23, 2020

The Honorable Janice Schakowsky
Chair
House Committee on Energy & Commerce
Subcommittee on Consumer Protection and
Commerce
Washington, DC 20515

The Honorable Cathy McMorris Rodgers
Ranking Member
House Committee on Energy & Commerce
Subcommittee on Consumer Protection and
Commerce
Washington, DC 20515

*Re: Subcommittee Hearing on Mainstreaming Extremism: Social Media's Role in
Radicalizing America*

Dear Chair Schakowsky and Ranking Member McMorris Rodgers:

The undersigned associations appreciate that the Subcommittee is contemplating the importance of effectively responding to extremism online. Our member companies work aggressively to respond to and remove harmful content, including extremism.¹ For example, YouTube's investment in machine learning resulted in approximately 90% of the videos removed for violating its policy on violent extremism being taken down before they had 10 views, and in the first half of 2020, the company removed more than a million videos under its community guidelines on violent extremism.² Similarly, in the last two months Facebook and Twitter announced new policies and subsequent removal of thousands of pages, groups, and accounts for supporting violence or behavior that has the potential to lead to offline harm.³ In no way do our member companies support extremism or radicalizing of America. They take their content moderation policies seriously and work to remove content that is lawful but deleterious to society.

Section 230 of the Telecommunications Act, codified at 47 U.S.C. § 230, is what empowers digital services, including social media companies, to respond and quickly take down extremism online. Section 230 enables online services, websites, and many other digital intermediaries to maintain healthy, safe, and vibrant ecosystems. It is both a sword and shield against bad actors. As a shield, it limits liability pertaining to third-party content or behavior; as a sword it enables services to act promptly, surgically removing 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

¹ See, e.g., Facebook, *Combating Hate and Extremism* (Sept. 17, 2019), <https://about.fb.com/news/2019/09/combating-hate-and-extremism/>; Twitter, *Addressing the abuse of tech to spread terrorist and extremist content* (May 15, 2019), https://blog.twitter.com/en_us/topics/company/2019/addressing-the-abuse-of-tech-to-spread-terrorist-and-extremist-c.html; Kent Walker, *Four steps we're taking today to fight terrorism online*, Google (June 18, 2017), <https://www.blog.google/topics/google-europe/four-steps-were-taking-today-fight-online-terror/>; YouTube, *An update on our commitment to fight violent extremist content online* (Oct. 17, 2017), <https://blog.youtube/news-and-events/an-update-on-our-commitment-to-fight>.

² Google Transparency Report, YouTube Community Guidelines enforcement, Featured Policies: Violent Extremism, <https://transparencyreport.google.com/youtube-policy/featured-policies/violent-extremism>.

³ Facebook, *An Update to How We Address Movements and Organizations Tied to Violence* (Aug. 19, 2020), <https://about.fb.com/news/2020/08/addressing-movements-and-organizations-tied-to-violence/>; Twitter (July 21, 2020), <https://twitter.com/TwitterSafety/status/1285726277719199746> (thread on new policy around 'QAnon').

moderate. This helps combat online content and misbehavior that is abusive, inappropriate, or otherwise objectionable, though lawful. Section 230 provides the incentive for Internet companies to consistently try to make the appropriate decisions on moderation.⁴ Most extremist content is “lawful but awful” speech, and companies rely upon Section 230 in removing it.⁵ Narrowing this protection would have the perverse result of impeding online services’ and websites’ efforts to police bad actors and misconduct. Policymakers should want to strengthen the law that empowers Internet services to take down harmful content rather than weaken it.

Altering Section 230 would greatly undermine industry efforts to keep hate speech and extremist content offline. Making Internet services liable for illegal third-party content that they fail to detect and remove would fall hardest on platforms that are least able to bear the risk and cost of increased liability and uncertainty. For those who are concerned about economic concentration at the edge of the Internet, it is worth noting that larger services may be relatively well-positioned to bear the increased costs of decreased immunity, whereas startups and smaller sites are not. 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. Cautious sites and services, wary of anything that could lead to risk, may only give a platform to establishment viewpoints. Marginalized communities would suffer the most, being subject to increased scrutiny by litigation-wary lawyers hoping to avoid controversy.

Section 230 also empowers law enforcement to take actions against platforms for anything that is unlawful including violations of federal criminal law, intellectual property law, illegal trafficking of drugs or weapons, and child protection law.⁶ This means that if the Department of Justice seeks to enforce criminal laws against a platform, Section 230 is no barrier. Likewise, if any private party wants to take action against a platform for violations of copyright, trademark, or any other intellectual property law, Section 230 is no barrier. Moreover, it should go without saying that if something is illegal offline, it is also illegal online. The speaker is *always* liable for their own illegal activity online. At the same time, if a platform “is responsible in whole or in part for the creation or development” of the content, Section 230 is no protection.⁷

We look forward to continuing to work with you on these important issues.

Sincerely,

Arthur Sidney
Vice President, Public Policy
Computer & Communications Industry
Association

Carl Szabo
Vice President and General Counsel
NetChoice

⁴ Matt Laslo, *The Fight Over Section 230—and the Internet as We Know It*, Wired (Aug. 13, 2019), <https://www.wired.com/story/fight-over-section-230-internet-as-we-know-it/>.

⁵ Matt Schruers, *What Is Section 230’s “Otherwise Objectionable” Provision?*, Disruptive Competition Project (July 29, 2020), <https://www.project-disco.org/innovation/072920-what-is-section-230s-otherwise-objectionable-provision/>.

⁶ See 47 U.S.C. § 230(e)(1)-(5).

⁷ See 47 U.S.C. § 230(f)(3). This is what enabled the FBI to take down Backpage even before enactment of SESTA/FOSTA. See Tim Cushing, *Federal Backpage Indictment Shows SESTA Unnecessary, Contains Zero Sex Trafficking Charges*, Techdirt (Apr. 10, 2018), <https://www.techdirt.com/articles/20180409/18423839598/federal-backpage-indictment-shows-sesta-unnecessary-contains-zero-sex-trafficking-charges.shtml>.