



November 30, 2021

The Honorable Michael F. Doyle
Chair
House Committee on Energy & Commerce
Subcommittee on Communications &
Technology
Washington, DC 20515

The Honorable Robert E. Latta
Ranking Member
House Committee on Energy & Commerce
Subcommittee on Communications &
Technology
Washington, DC 20515

Re: December 1 Subcommittee Hearing: Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity

Dear Chair Doyle and Ranking Member Latta:

On behalf of the Computer & Communications Industry Association (CCIA),¹ I write to offer some information for consideration in advance of the December 1, 2021 hearing on “Holding Big Tech Accountable: Targeted Reforms to Tech’s Legal Immunity.”

We understand that during the hearing, proposals to amend Section 230 of the Telecommunications Act will be discussed. This is a critical provision for any website that allows third-party user-generated content. Codified at 47 U.S.C. § 230, Section 230 facilitates legal certainty regarding online commerce and communication, making it possible for 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.² Undermining foundational intermediary liability protections could cost an estimated 4.25 million American jobs and \$400 billion over the next decade, according to 2017 research.³ 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 their localities, including

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Engine, *Section 230: Cost Report* (2019), https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5c8168cae5e5f04b9a30e84e/1551984843007/Engine_Primer_230cost2019.pdf.

³ 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>.

through marketing tools and interactive customer services. However, for these tools to function, companies need legal certainty that they will not be held liable for all communications that arise between businesses and consumers using these tools, or sued for efforts to improve the consumer's experience.

Importantly, digital services are committed to ensuring consumer trust and safety online. As you may be aware, a number of companies recently announced that they have been voluntarily participating in the Digital Trust & Safety Partnership to develop best practices to ensure a safer and more trustworthy Internet.⁴ Responsible services take aggressive steps to moderate harmful content, including extremism and misinformation, with content moderation requiring a mix of automated tools and human review. Due to the scale at which online services operate, much of their moderation work must be done algorithmically—or at least with the assistance of algorithms or automated processes—in order to function. A reduction in moderation would lead to an increase in the spread of reprehensible content online, including racism and hate speech, religious and ethnic intolerance, public health-related misinformation, and election-related disinformation by foreign agents.

Services can respond aggressively to this material because they have the legal certainty to do so. What makes this moderation possible is Section 230, including the phrase “otherwise objectionable,” which enables digital services to act regarding speech that is problematic, but still lawful. Congress’s decision to use this term acknowledged that it could not anticipate and legislate every form of problematic online content or behavior. Under a narrower definition, digital services would be discouraged from acting against a considerable amount of potentially harmful but legal content online, lest moderating it lead to litigation.⁵

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 is 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. Small firms may adopt even more aggressive editorial policies, or decide to exit the market — or never enter it — which would discourage innovation and free expression by all stakeholders. 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.⁶

⁴ Digital Trust & Safety Partnership, <https://dtspartnership.org/>.

⁵ See 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/> (explaining the contours of “otherwise objectionable”).

⁶ Adi Robertson, *Social justice groups warn Biden against throwing out Section 230*, The Verge (Jan. 27, 2021), <https://theverge.com/2021/1/27/22251093/section-230-civil-rights-groups-letter-biden-harris-congress-defense>.

Section 230 provides the necessary flexibility for digital services to engage in responsible content moderation. In our view, the legislative proposals' focus upon Section 230 to address civil rights abuses is misplaced. Under Section 230, services are not liable for third-party content posted by users. U.S. law distinguishes between a service that plays a role in creating user content, and thus qualifies as an 'information content provider,' and a service that merely hosts it, an 'interactive computer service.' *Compare Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) with *Chicago Lawyers' Committee For Civil Rights Under Law v. Craigslist*, 519 F.3d 666 (7th Cir. 2008). Nothing prevents the application of existing civil rights laws against the actual perpetrators engaged in misconduct. And nothing in current law prohibits the application of state or federal civil rights law to content that is posted online.

Unfortunately, provisions in these proposals could be interpreted to result in the removal of beneficial ads lawfully targeted at specific groups to whom the ad might be relevant. There are many legitimate uses for targeting advertisements to particular groups and this bill may discourage those broadly, because services can't in real time parse out the handful of bad actors from the millions of legitimate uses, making that fraught with legal risk. Compliance could deter services from providing products that are implicated by these proposals, were they to become law, ultimately resulting in fewer options for consumers. As discussed above, the hallmark of Section 230 is its flexibility; proposals such as the ones before the Subcommittee today add limitations and seek to curtail digital services' responses and limit service content moderation options. Thus, although these changes are well-intended, they will have unintended consequences for both digital services and users.

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,

Arthur D. Sidney
Vice President of Public Policy
Computer & Communications Industry Association