

**Attachment—Additional Questions for the Record**

**Subcommittee on Communications and Technology and  
Subcommittee on Consumer Protection and Commerce  
Joint Hearing on  
“Fostering a Healthier Internet to Protect Consumers”  
October 16, 2019**

**Ms. Danielle Keats Citron, Professor of Law, Boston University School of Law**

**The Honorable Anna G. Eshoo (D-CA)**

- 1. Your idea for including a reasonableness standard in Section 230 is an interesting idea. There are, of course, fringe platforms that have less than reasonable business practices. On the whole, are major tech companies’ current practices reasonable? Is there any entity, regulatory or otherwise, you think could define reasonable in this context, or should courts define it over time?**

**Response:** Under my proposal with Ben Wittes, platforms would enjoy immunity from liability *if* they could show that their content-moderation practices writ large are reasonable. Our revision to Section 230(c)(1) would read as follows:

*No provider or user of an interactive computer service that takes reasonable steps to address unlawful uses of its service that clearly create serious harm to others shall be treated as the publisher or speaker of any information provided by another information content provider in any action arising out of the publication of content provided by that information content provider.*

If adopted, the question before the courts in a motion to dismiss on Section 230 grounds would be whether a defendant employed reasonable content moderation practices in the face of unlawful activity. The question would *not* be whether a platform acted reasonably with regard to a specific use of the service. Instead, the court would ask whether the provider or user of a service engaged in reasonable content moderation practices writ large with regard to unlawful uses that clearly create serious harm to others.

The reasonableness of a company’s content moderation practices depends upon the practices and content in question. Courts are well suited to address the reasonableness of a platform’s speech policies and practices vis-à-vis particular forms of illegality that cause clear harm to others (at the heart of a litigant’s claims), as my proposal with Benjamin Wittes (hereinafter “Proposal”) suggests. Reasonableness is an effective tool because it will evolve as best practices and technologies do. What is reasonable policy vis-à-vis involuntary pornography today may be different over time, especially as technologies change.

Reasonableness does not anticipate a one-size-fits-all approach but rather is tailored to the problem at hand and the size and nature of the work of the platform. Today, Facebook's policy on nonconsensual porn exemplifies reasonable approach given the scale of the problem and the harm at issue. Indeed, with its hashing program, Facebook is operating at the cutting edge of best practices. As technology and practices develop, Facebook's policies and practices may need to evolve as more effective tools and strategies to address nonconsensual pornography become available.

### **The Honorable Kathy Castor (D-FL)**

- 1. On June 19, 2019, The Verge published an investigation into one of Facebook's content moderation sites in Tampa, FL, which is operated by the firm Cognizant. The article details allegations of appalling working conditions including sexual harassment, verbal and physical fights, theft, and general filthiness in addition to adverse mental health effects associated with the nature of their work.**
  - a. Operationally, how should tech platforms moderate their content? What role should human content moderators play? What role should technology play?**

**Response:** Best practices for content moderation—speech policies and practices—depend upon the issue at hand and the platform in question. Some issues require human judgment. This is true of threats. “I want to kill you” could be an affectionate rib between friends or a genuine terroristic threat. Context is key. Algorithms could flag content for a reviewer but in the end the contextual inquiry must be made by a human being.

Let's consider an example. For child sexual exploitation (CSE) material and child pornography, companies rely on algorithmic flagging to filter and block content in connection with NCMEC's database of hashed images flagged as CSE material. Human reviewers may see CSE material that is not already in the NCMEC database but a considerable amount is dealt with via an automated filtering system.

- b. What standard should a private company use to evaluate content? “Quasi constitutional”, a “community standard” established by the company along the lines of other private media, other?**

**Response:** The standard of reasonableness would derive from the liability at issue. To start, Plaintiffs need a theory of relief to bring against a site. Content platforms are not strictly liable for content on their sites. A plaintiff, for instance, could bring potential claims like defamation (as publisher or distributor) or negligent enablement of crime against a site. Then, the question is whether the platform responded reasonably to types of unlawful activity alleged—defamation or negligent enablement of crime—causing clear harm to others.

Suppose victims of nonconsensual pornography sue a social network for negligent enablement of the crime of invasion of sexual privacy. Plaintiffs allege that the site has a clear policy banning nonconsensual posting of intimate images but has done nothing to respond to their complaints. The site moves to dismiss the suit on Section 230 grounds alleging that it has responded reasonably to nonconsensual pornography (NCP) complaints. Suppose further that the site employs 50 content moderators who regularly respond to complaints about NCP within a week's time. The site has a user-friendly process to report abuse. The court may grant the defendant's motion to dismiss on Section 230 grounds, reasoning that the site has a reasonable process to deal with NCP even though the site's moderators failed to respond responsibly in Plaintiffs' case. The key is the reasonableness of the site's NCP practices writ large, not its response in any given case.

If Section 230 were amended along the lines that Ben Wittes and I have suggested, a legal shield would apply to sites sued as publishers or speakers that *takes reasonable steps to address unlawful uses of its service that clearly create serious harm to others*. The reasonableness question only addresses a site's response to (1) unlawful uses of its services that (2) clearly create serious harm to others. The immunity would only come into play if we were talking about proscribable illegality that causes clear harm to others. Generally speaking, the First Amendment protects hate speech and violent imagery. There, the immunity has no application because there would be no basis to sue that would be consistent with the First Amendment.

- c. **Given that private companies are not governed by standards that government would be when it decides not to post content, why do content moderators have to spend so much time reviewing and in such great detail evaluating explicit, violent, or hateful content? What value is there to society and the site owner to work to ensure that such explicit, violent, or hateful content is given every opportunity to be posted?**

**Response:** You are absolutely right. Sites have the freedom to remove content that law cannot prohibit like pornography and hate speech. No doubt, private companies would argue that those decisions reflect their self-expression. They would argue that they are First Amendment rights holders and thus can make any choice they wish about what content appears on their platforms.

Some companies do spend time and money addressing hate speech. They have speech rules and policies banning legally protected speech. Sometimes, their terms of service bans stem from pressure coming from EU lawmakers and law enforcers, as I have written about in the Notre Dame Law Review. Sometimes, advocates and advertisers convince sites to remove hate speech because users do not like it. Sometimes, platforms think it is not good for business to host pornography (Facebook is a case in point) even though porn is legally protected speech.

The problem is that there are still many other sites that do host illegality because it attracts eyeballs and thus ad revenue. Sites host nonconsensual pornography, threats, and deep fake sex videos because it is salacious and earns ad revenue. Those sites do not deserve Section 230 immunity.

- d. This explicit, violent, or hateful content often is known to be inconsistent with the tech platform's content bylaws. Why do tech platforms, like Facebook, force content moderators to not only look at but also evaluate in great detail explicit, violent, or hateful content that is often inconsistent with the tech platform's bylaws?**

**Response:** Why do they have speech policies that effectuate their rules? Like a diner that says customers have to wear shirts, a site may have rules banning hate speech. The incentives for having and enforcing such rules are outlined in my answer to (c).

- e. Should content moderators have more leeway to ban harmful content so they don't have to look at it over such lengthy time periods and evaluate the content in such detail?**

**Response:** I imagine that is covered by the terms of their contract with their employers.

- f. What should industry best practices be for treating content moderators? Should Congress play a role in ensuring worker rights in this unique industry? If so, how?**

**Response:** The same rules apply to workplaces of content moderators as other firms of their size in the United States. Title VII would address workplace sexual harassment so long as firms had 50 employees. It may become apparent to Congress that new workplace safety rules are needed to address smaller firms including content moderators.

- g. Is it common practice among tech platforms to use contractors to conduct content moderation for their sites? Why do some tech platforms use contractors to conduct content moderation for their sites? Should tech platforms do this?**

**Response:** Yes, see Sarah Roberts's important new book called Behind the Screen on this point. They likely use contractors because it is cheaper. If Congress thinks that such practices undermine worker rights then I hope Congress addresses this inequity.

**The Honorable Lisa Blunt Rochester (D-DE)**

- 1. What can the federal government do to improve the capacity and ability to effectively moderate online content, including technological research?**

**Response:** I do not imagine a role for the federal government in the content moderation process. My strong inclination is to keep the incentives where they are—on encouraging private companies to moderate their own platforms and using the legal shield of Section 230 as that incentive but conditioning the incentive on responsible (reasonable) practices.

**The Honorable Greg Walden (R-OR)**

- 1. How do app stores differ from social media sites with regard to their responsibilities to moderate content?**

**Response:** App stores may have different responsibilities than content platforms like social networks. The answer would depend on the allegedly wrongful behavior of the app store and the liability alleged.

- 2. It's clear from the Congressional record that the authors of Section 230 recognized the need for industry to take responsibility to moderate their platforms because no government bureaucracy could regulate the vast content on the Internet. In Dr. Farid's testimony, he cites "fear" as the reason for inaction since PhotoDNA has been widely deployed and successful; that the success of PhotoDNA would show CSAM could be removed and quote, "the technology sector would have no defense for not contending with myriad abuses on their services."**

**What is it that has failed to encourage more research and deployment of similar technologies to address other illegal activity? Market forces? Fear?**

**Response:** There is no legal shield against federal criminal law. Hence, site operators can be held liable for publishing child porn. As a result, sites have a strong incentive to cooperate with NCMEC and filter child porn. There, incentives are operating well. For tortious user activity, however, sites have no such incentive. Section 230(c)(1) provides a legal shield for under filtering without the condition of responsible or reasonable content moderation practices. Thus, we need law to provide that incentive.

- 3. In an October 15, 2019 letter to the Energy & Commerce Committee (herein after "Letter"), TechFreedom conclusively states that there is no implicit quid pro quo embodied in Section 230, granting Internet platforms liability protections in return for keeping offensive and violent content off their platforms. See, e.g., Letter from TechFreedom, to U.S. House of Representatives Energy & Commerce Committee, at 1-2 (dated Oct. 15, 2019). Has this quid pro quo, however, been recognized by federal courts? See, e.g., Blumenthal v. Drudge, 992 F.Supp. 44, 52 (D.D.C. 1998) ("In some sort of tacit quid pro quo arrangement with the service provider community, Congress has conferred immunity from tort liability as an incentive to Internet service providers to self-police the Internet for obscenity and other offensive material, even where the self-policing is unsuccessful or not even attempted.").**
  - a. In this letter, the author states that, "The Republican Staff Memo claims that Section 230 has been interpreted more broadly than Congress intended: 'While the authors intended this liability protection to incentivize 'interactive computer services' to patrol their platforms, it was not intended to be interpreted as an unlimited, broad liability**

**protection absent any good faith action to maintain accountability.” See, Letter, at 5.**

**Response:** The lower federal courts and state courts have *not* found that Section 230(c)(1) is conditional on responsible practices, as the drafters intended. That is why Ben Wittes and I argue that Section 230(c)(1) should be made conditional (see language above) explicitly.

**b. Have the courts interpreted Section 230 more broadly than Congress intended? If so, which cases highlight such a diversion?**

**Response:** Courts have stretched Section 230 far beyond what its words, context, and purpose support.<sup>1</sup> Section 230 has been read to immunize platforms from liability that:

- knew about users’ illegal activity, deliberately refused to remove it, and ensured that those responsible could not be identified;<sup>2</sup>
- solicited users to engage in tortious and illegal activity;<sup>3</sup> and
- designed their sites to enhance the visibility of illegal activity and to ensure that the perpetrators could not be identified and caught.<sup>4</sup>

Courts have attributed this broad-sweeping approach to the fact that “First Amendment values [drove] the CDA.”<sup>5</sup> For support, courts have pointed to Section 230’s “findings” and “policy” sections, which highlight the importance of the “vibrant and competitive free market that presently exists” for the internet and the internet’s role in facilitating “myriad avenues for intellectual activity” and the “diversity of political discourse.”<sup>6</sup> As Mary Anne Franks has underscored, Congress’ stated goals also included the:

development of technologies that “maximize user control over what information is received” by Internet users, as well as the “vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking and harassment by means of the computer.” In other words, the law [wa]s intended to promote the values of privacy, security and liberty alongside the values of open discourse.<sup>7</sup>

Section 230’s liability shield has been extended to activity that has little to do with free speech, such as the sale of dangerous products.<sup>8</sup> Consider Armslist.com, the self-described “firearms marketplace.”<sup>9</sup> Unlicensed gun sellers use the site to find buyers who cannot pass background

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<sup>1</sup> Citron & Wittes, *supra* note, at 406-10.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Citron, *Section 230’s Challenge to Civil Rights and Civil Liberties*. See generally Olivier Sylvain, *Intermediary Design Duties*, 50 CONN. L. REV. 1 (2017).

<sup>5</sup> *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18 (1<sup>st</sup> Cir. 2016), cert. denied, 137 S. Ct. 622 (2017).

<sup>6</sup> See, e.g., *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9<sup>th</sup> Cir. 2009).

<sup>7</sup> Mary Anne Franks, *The Lawless Internet? Myths and Misconceptions About CDA Section 230*, HUFFINGTON POST (Feb. 17, 2014).

<sup>8</sup> See, e.g., *Hinton v. Amazon.com, LLC*, 72 F. Supp. 3d 685, 687, 690 (S.D. Miss. 2014).

<sup>9</sup> <https://www.armslist.com/>

checks.<sup>10</sup> Armslist.com is where Radcliffe Haughton illegally purchased a gun.<sup>11</sup> Haughton's estranged wife obtained a restraining order against him that banned him from legally purchasing a firearm.<sup>12</sup> On Armslist.com, Haughton found a gun seller that did not require a background check and purchased a gun.<sup>13</sup> He used that gun to murder his estranged wife and her two co-workers.<sup>14</sup> The Wisconsin Supreme Court found Armslist immune from liability based on Section 230.<sup>15</sup>

Extending Section 230's shield from liability to platforms that deliberately encourage, facilitate, or refuse to remove illegal activity would seem absurd to the CDA's drafters. But even more absurd to them would be immunizing from liability enterprises that have nothing to do with moderating online content, such as marketplaces that connect sellers of deadly weapons with prohibited buyers for a cut of the profits. Armslist.com can hardly be said to "provide 'educational and informational resources' or contribute to 'the diversity of political discourse.'"<sup>16</sup>

#### **4. Can you please explain why you believe market forces will likely not encourage more responsible content moderation but may actually produce the opposite?**

**Response:** Market forces alone are unlikely to encourage responsible content moderation. Platforms make their money through online advertising generated when users like, click, and share.<sup>17</sup> Allowing attention-grabbing abuse to remain online accords with platforms' rational self-interest.<sup>18</sup> Platforms "produce nothing and sell nothing except advertisements and information about users, and conflict among those users may be good for business."<sup>19</sup> If a company's analytics suggest that people pay more attention to content that makes them sad or angry, then the company will highlight such content.<sup>20</sup> Research shows that people are more attracted to negative and novel information.<sup>21</sup> Thus, keeping up destructive content may make the most sense for a company's bottom line.

As Federal Trade Commissioner Rohit Chopra powerfully warned in his dissent from the agency's 2019 settlement with Facebook, the behavioral advertising business model is the "root cause of [social media companies'] widespread and systemic problems."<sup>22</sup> Online behavioral advertising generates profits by "turning users into products, their activity into

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<sup>10</sup> See Mary Anne Franks, *Our Collective Responsibility for Mass Shootings*, N.Y. TIMES, October 11, 2019, available at <https://www.nytimes.com/2019/10/09/opinion/mass-shooting-responsibility.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* The non-profit organization the Cyber Civil Rights Initiative, of which one of us (Franks) is the President and one of us (Citron) is the Vice President, filed an amicus brief in support of the petitioner's request for writ of certiorari in the Supreme Court. Brief of Amicus Curiae of Cyber Civil Rights Initiative and Legal Academics in Support of Petitioners in *Yasmine Daniel v. Armslist.com*, available at [https://www.supremecourt.gov/DocketPDF/19/19-153/114340/20190830155050530\\_Brief.PDF](https://www.supremecourt.gov/DocketPDF/19/19-153/114340/20190830155050530_Brief.PDF).

<sup>16</sup> Amicus Curiae of Cyber Civil Right Initiative, *supra* note, at 16.

<sup>17</sup> Mary Anne Franks, *Justice Beyond Dispute*, 131 HARV. L. REV. 1374, 1386 (2018) (reviewing ETHAN KATSH & ORNA RABINOVICH-EINY, *DIGITAL JUSTICE: TECHNOLOGY AND THE INTERNET OF DISPUTES* (2017)).

<sup>18</sup> Danielle Keats Citron, *Cyber Mobs, Disinformation, and Death Videos: The Internet As It Is (and as It Should Be)*, 118 MICH. L. REV. (forthcoming 2020).

<sup>19</sup> *Id.*

<sup>20</sup> Dissenting Statement of Commissioner Rohit Chopra, *In re Facebook, Inc.*, Commission File No. 1823109, at 2 (July 24, 2019).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

assets,” and their platforms into “weapons of mass manipulation.”<sup>23</sup> Tech companies “have few incentives to stop [online abuse], and in some cases are incentivized to ignore or aggravate [it].”<sup>24</sup>

To be sure, the dominant tech companies have moderated certain content by shadow banning, filtering, or blocking it.<sup>25</sup> They have acceded to pressure from the European Commission to remove hate speech and terrorist activity.<sup>26</sup> They have banned certain forms of online abuse, such as nonconsensual pornography and threats, in response to pressure from users, advocacy groups, and advertisers.<sup>27</sup> They have expended resources to stem abuse that threatened their bottom line.<sup>28</sup>

Yet market pressures do not always point in that direction. The business model of some sites is abuse because it generates online traffic, clicks, and shares.<sup>29</sup> Thanks to online advertising revenue, deepfake pornography sites<sup>30</sup> as well as revenge porn sites and gossip sites<sup>31</sup> are thriving.

### **The Honorable Michael Burgess (R-TX)**

- 1. Mrs. Citron, section 230 of the Communications Decency Act provides liability protections for interactive computer services if they take steps to moderate harmful and illegal content. As a result, Internet platforms have created terms of service for content that they believe reflect the public interest. While harmful content can be identified by algorithms or artificial intelligence, humans are often the final decision-maker in removal of content.**
  - a. How can we better incentivize fair and accurate content moderation by Internet platforms that have Section 230 liability protections?**

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<sup>23</sup> *Id.*

<sup>24</sup> Franks, *Justice Beyond Dispute*, *supra* note, at 1386.

<sup>25</sup> Danielle Keats Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, 93 NOTRE DAME L. REV. 1035 (2018); Danielle Keats Citron & Helen Norton, *Intermediaries and Hate Speech: Fostering Digital Citizenship for the Information Age*, 91 B.U. L. REV. 1435, 1468-71 (2011).

<sup>26</sup> Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, *supra* note, at 1038-39.

<sup>27</sup> *Id.* at 1037.

<sup>28</sup> CITRON, HATE CRIMES IN CYBERSPACE, *supra* note, at 229 (discussing how Facebook changed its position on pro rape pages after fifteen companies threatened to pull their ads); Mary Anne Franks, *“Revenge Porn” Reform: A View from the Front Lines*, 69 FLA. L. REV. 1251 (2017).

<sup>29</sup> For instance, eight of the top ten pornography websites host deepfake pornography, and there are nine deepfake pornography websites hosting 13,254 fake porn videos (mostly featuring female celebrities without their consent). These sites generate income from advertising. Indeed, as the first comprehensive study of deepfake video and audio explains, “deepfake pornography represents a growing business opportunity, with all of these websites featuring some form of advertising.” Deeprace Labs, *The State of Deepfakes: Landscape, Threats, and Impact* 6 (September 2019), available at <https://storage.googleapis.com/deeprace-public/Deeprace-the-State-of-Deepfakes-2019.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., *Erna Besic Psycho Mom of Two!*, THE DIRTY (Oct. 9, 2019, 10:02 AM), <https://thedirty.com/#post-2374229>.

**Response:** My proposal with Ben Wittes is designed to provide an incentive to content platforms to engage in responsible content moderation practices where no such legal incentive exists today. Today, under Section 230(c)(1), a content platform enjoys the legal shield for hosting user content even though the platform acted irresponsibly. Our proposal would keep the immunity but explicitly condition it on reasonable content moderation practices as discussed below.

Under our proposal, platforms would enjoy immunity from liability *if* they could show that their content-moderation practices writ large are reasonable. The revision to Section 230(c)(1) would read as follows:

No provider or user of an interactive computer service that *takes reasonable steps to address unlawful uses of its service that clearly create serious harm to others* shall be treated as the publisher or speaker of any information provided by another information content provider *in any action arising out of the publication of content provided by that information content provider.*

If adopted, the question before the courts in a motion to dismiss on Section 230 grounds would be whether a defendant employed reasonable content moderation practices in the face of unlawful activity. The question would *not* be whether a platform acted reasonably with regard to a specific use of the service. Instead, the court would ask whether the provider or user of a service engaged in reasonable content moderation practices writ large with regard to unlawful uses that clearly create serious harm to others.<sup>32</sup>

The assessment of reasonable content-moderation practices would take into account differences among online entities. Social networks with millions of postings a day cannot plausibly respond to complaints of abuse immediately, let alone within a day or two. On the other hand, they may be able to deploy technologies to detect and filter content that they previously determined was unlawful.<sup>33</sup>

The duty of care will evolve as technology improves and as new threats emerge. There is no one size fits all approach to responsible content moderation. Unlawful activity changes and morphs quickly online and the strategies for addressing unlawful activity clearly causing serious harm should change as well. A reasonableness standard would adapt and evolve to address those changes.

A reasonable standard of care will reduce opportunities for abuse without interfering with the further development of a vibrant internet or unintentionally turning innocent platforms into involuntary insurers for those injured through their sites. Approaching the problem as one of

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<sup>32</sup> Tech companies have signaled their support as well. For instance, IBM issued a statement saying that Congress should adopt the proposal and wrote a tweet to that effect as well. Ryan Hagemann, *A Precision Approach to Stopping Illegal Online Activities*, IBM THINK POLICY (July 10, 2019), <https://www.ibm.com/blogs/policy/cda-230/>; see also @RyanLeeHagemann, TWITTER (July 10, 2019, 3:14 PM), <https://twitter.com/RyanLeeHagemann/status/1149035886945939457?s=20> (“A special shoutout to @daniellecitron and @benjaminwittes, who helped to clarify what a moderate, compromise-oriented approach to the #Section230 debate looks like.”).

<sup>33</sup> Citron, *Sexual Privacy*, *supra* note (discussing Facebook’s hashing initiative to address nonconsensual distribution of intimate images).

setting an appropriate standard of care more readily allows differentiating between different kinds of online actors. Websites that solicit illegality or that refuse to address unlawful activity that clearly creates serious harm should not enjoy immunity from liability. On the other hand, social networks that have safety and speech policies that are transparent and reasonably executed at scale should enjoy the immunity from liability as the drafters of Section 230 intended.

Law should change to ensure that such power is wielded responsibly. With Section 230, Congress sought to provide incentives for “Good Samaritans” engaged in efforts to moderate content. Their goal was laudable. Section 230 should be amended to condition the immunity on reasonable moderation practices rather than the free pass that exists today. Market pressures and morals are not always enough, and they should not have to be.

**b. How can we make terms of service more understandable for the average consumer so that they know what content is acceptable and when to identify user content as harmful?**

**Response:** Congress could condition Section 230 on reasonable content moderation practices that include both transparency (clear speech rules and policies) and accountability (giving users a reason for their decisions as to complaints about their content and a chance to respond). My book *Hate Crimes in Cyberspace* calls this a form of technological due process.

**2. Mrs. Citron, since the 1990s the Internet has flourished, providing opportunities for business development and free expression. However, some individuals have used the Internet to engage in activity that, if conducted offline, would be illegal. For example, the illegal sale of firearms, prescription of illicit drugs, and the facilitation of human trafficking. Congress recently removed liability protections for Internet platforms that hosted sex trafficking content.**

**a. How do Section 230 liability protections apply to other content that would be illegal if conducted offline?**

**Response:** Section 230, as it currently is interpreted, has shielded platforms from liability in cases where they would be liable if the activity occurred offline. Take the Armslist case. There, the site got a cut of illegal gun sales. If the site ran a store and allowed parties to come into the store to sell guns without background checks, then the site might be liable under state law. Yet because the site enabled the illegal gun sale online, the legal shield prevented the litigation.

**3. Despite the cover of Section 230 liability protections, many Internet platforms do not effectively moderate illegal activity or content.**

**a. What obstacles prevent Internet platforms from moderating, and removing, explicitly illegal content?**

**Response:** Section 230 actually incentivizes rather than impedes the removal of content, conditioning it on good faith.

**The Honorable Adam Kinzinger (R-IL)**

- 1. Professor Citron, a common theme in your testimony—as well as the submitted testimonies of Professor Farid and Ms. Peters—was one of “incentives.” Section 230 of the Communications Decency Act was meant to encourage online platforms to rid their platforms of bad behavior in exchange for liability limitations, yet the examples you all point to suggest the platforms are not delivering on that promise.**
  - a. I'm not sure yet whether we should amend Section 230, but if the platforms want to keep the benefits of Section 230, don't they need to do a better job of demonstrating what they claim—that they are able and willing to curb illegal activity?**

**Response:** Content platforms do need to do a better job to act like Good Samaritans as the drafters of Section 230 wanted. There are sites devoted to illegality, from deep fake sex videos and revenge porn to illegal gun sales. Those sites should not enjoy the legal shield. They are far from the Good Samaritans imagined by Reps. Cox and Wyden. We need to condition the legal shield on responsible practices.