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6 WHERE ARE WE NOW:

7 SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996

8 THURSDAY, APRIL 11, 2024

9 House of Representatives,

10 Subcommittee on Communications and Technology,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13

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16 The Subcommittee met, pursuant to call, at 1:01 p.m. in

17 Room 2123, Rayburn House Office Building, Hon. Bob Latta

18 [Chairman of the Subcommittee] presiding.

19 Present: Representatives Latta, Bilirakis, Walberg,

20 Carter, Dunn, Curtis, Joyce, Weber, Allen, Fulcher,

21 Balderson, Pfluger, Harshbarger, Cammack, Obernolte, Rodgers

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22 (ex officio); Matsui, Clarke, Veasey, Soto, Eshoo, Cardenas,  
23 Craig, Fletcher, Dingell, Kuster, Kelly, and Pallone (ex  
24 officio).

25 Also present: Representative Schakowsky.

26 Staff Present: Slate Herman, Counsel, C&T; Nate Hodson,  
27 Staff Director; Tara Hupman, General Counsel; Noah Jackson,  
28 Clerk, C&T; Sean Kelly, Press Secretary; Peter Kielty,  
29 General Counsel; Emily King, Member Services Director; Giulia  
30 Leganski, Professional Staff Member, C&T; John Lin, Senior  
31 Counsel, C&T; Kate O'Connor, Chief Counsel, C&T; Karli  
32 Plucker, Director of Operations (shared staff); Hannah Anton,  
33 Minority Policy Analyst; Keegan Cardman, Minority Staff  
34 Assistant; Jennifer Epperson, Minority Chief Counsel, C&T;  
35 Waverly Gordon, Minority Deputy Staff Director and General  
36 Counsel; Tiffany Guarascio, Minority Staff Director; Dan  
37 Miller, Minority Professional Staff Member; Michael Scurato,  
38 Minority FCC Detailee; Andrew Souvall, Minority Director of  
39 Communications, Outreach, and Member Services; and Johanna  
40 Thomas, Minority Counsel.

41

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42           \*Mr. Latta. The subcommittee will come to order, and  
43 the chair recognizes himself for an opening statement.

44           Good afternoon, and welcome to today's hearing on  
45 Section 230 of the Communications Decency Act.

46           In 1996, the early days of the Internet, Section 230 was  
47 enacted to provide online platforms immunity from liability  
48 for content posted by third-party users. This legal  
49 protection was instrumental in fostering the growth of these  
50 platforms, and unleashed a vibrant online ecosystem that led  
51 to the creation of social media platforms that promoted user-  
52 generated content, social interaction, and innovation.

53           Section 230 has two main mechanisms: first, a provision  
54 that exempts platforms from being held liable for content  
55 that is posted on their website by a third-party user; and  
56 second, a provision that exempts platforms from being held  
57 liable for content that they remove or moderate in good  
58 faith. This dual liability protection is often referred to  
59 as the sword and the shield, the sword being the ability for  
60 platforms to remove the content, and shield being the  
61 liability protection for content posted by users of the  
62 platform.

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63           As the Internet has evolved and become deeply integrated  
64 into our daily lives, we have encountered new challenges and  
65 complexities that require a reevaluation of Section 230's  
66 role and impact. One of the most pressing concerns is the  
67 power that Section 230 has given to the social media  
68 platforms. Big Tech is able to limit free speech and silence  
69 viewpoints, especially of those that they do not agree with.  
70 There are countless instances where individuals and groups  
71 with conservative viewpoints have faced censorship, de-  
72 platforming, and content moderation practices.

73           In contrast, Big Tech continues to leave up highly  
74 concerning content. The prevalence of illegal activities  
75 such as illicit drug sales, human trafficking, and child  
76 exploitation on some platforms underscore the need for  
77 stronger mechanisms to hold platforms accountable for  
78 facilitating or enabling harmful behavior.

79           Big Tech's authoritarian actions have led to several  
80 court cases challenging the scope of Section 230's liability  
81 protection. Over the years the courts have shaped the broad  
82 interpretation and application of the law. Some argue the  
83 courts have provided Big Tech with too much liability

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84 protection.

85           Last year two high-profile cases related to terrorist  
86 activity on platforms were considered before the Supreme  
87 Court. In one case the law was upheld and the other case,  
88 which challenged Section 230's application to content  
89 promoted by algorithms, the court declined to rule. This  
90 year two more cases are before the Supreme Court related to a  
91 state's ability to regulate how social media platforms  
92 moderate content.

93           It has become clear that Congress never contemplated the  
94 Internet as it exists today when Section 230 was enacted.  
95 While the courts have too broadly interpreted the original  
96 intent of this law, numerous Supreme Court justices declared  
97 last year that it is up to Congress, not the courts, to  
98 reform Section 230. It is time for Congress to review the  
99 current legal framework that shields Big Tech from  
100 accountability for their decisions. We must determine how to  
101 strike a balance between protecting online speech and holding  
102 platforms accountable for their role in amplifying harmful  
103 and illegal content.

104           I look forward to hearing from our witnesses and working

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105 with my colleagues for thoughtful and targeted reforms to  
106 Section 230.

107 [The prepared statement of Mr. Latta follows:]

108

109 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

110

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111           \*Mr. Latta. And with that I will yield back the balance  
112 of my time, and at this time I will recognize the gentlelady  
113 from California's 16th district for an opening statement.

114           \*Ms. Eshoo. Thank you. Thank you, Mr. Chairman, and I  
115 want to thank the witnesses for being here today. I am  
116 really looking forward to what you will advise us of.

117           There aren't many members that can say I was a conferee  
118 for the Telecommunications Act of 1996, but I was. And that  
119 work included Section 230 of the Communications Decency Act.

120           Now, I continue to strongly believe in Section 230's  
121 core benefit, which is to protect user speech. But when  
122 algorithms select what content will appear, personalized for  
123 each user, the platform is more than just a conduit  
124 transferring one's user speech to others and should not be  
125 immune from courts examining if their actions cause harm.

126           Withdrawal of immunity is not the same, in my view, as  
127 the imposition of liability. Those harmed should have the  
128 opportunity to confront the platforms in court and prove that  
129 they did not meet an established standard of care.

130           And platforms should have the opportunity to defend  
131 themselves. When we adopted Section 230 so many years ago,

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132 the Internet was a nascent technology. It was like a little  
133 baby in the crib. I know, because it was born in my  
134 district. And we didn't want to stifle innovation. We had  
135 that at the forefront of our work as we drafted and debated  
136 and discussed.

137 We recognized that an open Internet risked encouraging  
138 noxious activity, so we enlisted the tech companies to be  
139 partners in keeping it clean, giving them immunity for Good  
140 Samaritan efforts that over or under-filtered objectionable  
141 content.

142 It has been 28 years, 28 years since Congress adopted  
143 Section 230. And in my view, it is clear that we have made  
144 mistakes. It has allowed online platforms to operate with  
145 impunity, despite the harms it has wrought. They have  
146 knowingly and recklessly recommended content that harms  
147 children.

148 Every policy in this country should start with no harm  
149 to the children, and there has been enormous harm done to  
150 children.

151 Also, abuses of women and marginalized communities, and  
152 radicalizing Americans through the spread of misinformation



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153 and disinformation, threatening our very democracy.

154           When Congress passed Section 230, we did not foresee  
155 what the Internet would become and how it would be used. We  
156 have the experience now. All we have to do is look over our  
157 shoulders and peruse 28 years' worth. We didn't anticipate  
158 the harms to children, its use for the illegal sale of arms  
159 and opioids, abuse and harassment of women and, as I said  
160 before, marginalized communities, especially through revenge  
161 pornography, through deepfakes, doxing, and swatting. This  
162 is a very long list of dark undertakings. No one can be  
163 proud of that. No one. And it is not defensible, in my  
164 view.

165           We didn't anticipate how it would be exploited to spread  
166 misinformation and disinformation, interfere with our  
167 elections, and threaten the foundations of our democracy and  
168 society. And we didn't anticipate online platforms designing  
169 their products to algorithmically amplify content despite its  
170 threats to the American people. All of this necessitates  
171 Congress to update the law.

172           I appreciate the chairman. I very much appreciate the  
173 chairman holding this hearing on this highly important topic.

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174 And again, I will circle back to how I started. I genuinely  
175 look forward to the witnesses' testimony and discussion.

176 [The prepared statement of Ms. Eshoo follows:]

177

178 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

179

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180           \*Ms. Eshoo. And Mr. Chairman, I yield back.

181           \*Mr. Latta. Thank you. The gentlelady yields back.

182 The chair now recognizes for five minutes the gentlelady from  
183 Washington, the full committee chair, for five minutes.

184           \*The Chair. Thank you. Thank you. Good afternoon.  
185 Thank you, Mr. Chairman.

186           Last month this committee led a bill that passed out of  
187 the House with overwhelming support to protect Americans  
188 against national security threats posed by TikTok. The  
189 Protecting Americans from Foreign Adversary Controlled  
190 Applications Act is significant legislation that will protect  
191 Americans and our children from a CCP-controlled social media  
192 company that threatens American national security and fails  
193 to uphold our values.

194           That debate has also reignited longstanding concerns  
195 about U.S. social media companies, and how Congress can keep  
196 them transparent and accountable to Americans. Today we will  
197 examine the law that provides the most significant  
198 protections for those social media companies: Section 230 of  
199 the Communications Decency Act of 1996.

200           A lot has changed since then, from recent developments

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201 in artificial intelligence and its applications to the growth  
202 of Big Tech and other companies that have become increasingly  
203 integrated into our everyday lives. Needless to say, this  
204 law is long overdue for meaningful updates, and I look  
205 forward to discussing those today.

206 As written, this law was originally intended to protect  
207 Internet service providers from being held liable for content  
208 posted by a third-party user or from removing horrific or  
209 illegal content. The intent was to make the Internet a safe  
210 space for users to connect and find information. However,  
211 the Internet has changed dramatically since then. As a  
212 result, Section 230 is now being weaponized by Big Tech  
213 against Americans.

214 Big Tech actively curates the content that appears on  
215 their platforms in order to control what we see and what we  
216 are allowed to post. This level of moderation is similar to  
217 that of a traditional newspaper or publisher, who carefully  
218 curates the articles, opinions, and information they publish  
219 for their readers. Just as a newspaper editor chooses which  
220 stories make it to the front page and which ones are  
221 relegated to the inner sections, Big Tech companies make

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222 decisions about the visibility and accessibility of content  
223 on their platforms.

224 As these companies increasingly evolve and act more like  
225 publishers, they have a responsibility to the American people  
226 to moderate their platforms in a fair way that upholds  
227 American values like free speech. No other class of company  
228 in the United States has full immunity from liability like  
229 Big Tech.

230 The reality is that for years these companies have  
231 failed to be good stewards of their platforms, especially  
232 when it comes to how they are harming our kids. We have seen  
233 numerous reports detailing how Big Tech encourages addictive  
234 behaviors in our children in order to keep them glued to  
235 their screens, and fails to protect their users from  
236 malicious actors on their platforms. We have all heard  
237 countless heartbreaking stories of drug dealers targeting  
238 children with illegal drugs, including counterfeit drugs  
239 laced with fentanyl which are killing hundreds of Americans  
240 every single day.

241 We also see platforms failing to take action to address  
242 cyber bullying and harassing content, which is contributing

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243 to the rise in teen mental health issues. Parents and  
244 victims are unable to hold these platforms accountable for  
245 content they promote or amplify due to the way laws like  
246 Section 230 are currently written. This legislative shield  
247 allows Big Tech to hide from expensive lawsuits, and no one  
248 is held responsible for the loss of innocent lives.

249 I have said it before and I will say it again: Big Tech  
250 remains my biggest fear as a parent, and they need to be held  
251 accountable for their actions.

252 These issues are not new. Last Congress we created the  
253 Big Tech Accountability Platform to examine these topics, and  
254 I led a proposal to reform Section 230. Big Tech is abusing  
255 the power granted to them by Congress. They are censoring  
256 Americans, allowing and promoting illegal content, and  
257 turning a blind eye to how their platforms endanger our  
258 children. It is long past time to reevaluate this unchecked  
259 power, and I am hopeful that this hearing is the start of an  
260 opportunity to work in a bipartisan way to do just that.

261 It is vital that we identify solutions that restore  
262 people's free speech online. I look forward to the hearing  
263 today and appreciate the witnesses being here.

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264 [The prepared statement of The Chair follows:]

265

266 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

267

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268           \*The Chair. And I yield back.

269           \*Mr. Latta. Thank you. The gentlelady yields back.

270 The chair now recognizes the gentleman from New Jersey, the  
271 ranking member of the full committee, for five minutes.

272           \*Mr. Pallone. Thank you, Mr. Chairman.

273           We are here today to talk about Section 230 of the  
274 Communications Decency Act, and Section 230 was codified  
275 nearly 30 years ago as a Good Samaritan statute designed to  
276 incentivize interactive computer services, like websites, to  
277 restrict harmful content. It has been critically important  
278 to the growth of the Internet, particularly in its early  
279 stages. But much has changed in the last 30 years, and  
280 unfortunately, in recent years Section 230 has contributed to  
281 unchecked power for social media companies that has led them  
282 to operate their platforms in a state of lawlessness.

283           So I am pleased this hearing is bipartisan. Democrats  
284 and Republicans have come together recently to address  
285 challenges presented by the rising influence of Big Tech in  
286 our daily lives and the evolving communications landscape.  
287 Earlier this year we worked together to address the dangers  
288 of allowing the Chinese Communist Party to control TikTok.



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289 We also passed my legislation with Chair Rodgers restricting  
290 the sale of Americans' data to foreign adversaries, and that  
291 bill unanimously passed the House last month, something that  
292 is almost unheard of in the House right now.

293 I am hopeful that we can continue to focus on the areas  
294 where Democrats and Republicans can agree social media  
295 platforms are not working for the American people, especially  
296 our children. Whether it is videos glorifying suicide and  
297 eating disorders, dangerous viral challenges, merciless  
298 bullying and harassment, graphic violence or drug sales,  
299 pervasive and targeted harmful content on these platforms is  
300 being fed non-stop to children and adults alike.

301 And worse yet, the platforms are playing an active role  
302 in shaping these messages, connecting users to one another,  
303 promoting and curating this content, and monetizing it.  
304 Social media companies are putting their own profits ahead of  
305 the American people, and Section 230 is operating as a  
306 shield, allowing the social media companies to avoid  
307 accountability to the victims and to the public for their  
308 decisions.

309 The fact that this relatively simple provision of law

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310 now operates as a near-complete immunity shield for social  
311 media companies is due to egregious expansion and  
312 misinterpretation by years of judicial opinions. Congress  
313 should not wait for courts to reverse course. We have to act  
314 now.

315       There was a chance last year, when the Supreme Court had  
316 the opportunity to decide the very important question of  
317 whether algorithmic amplification was protected by Section  
318 230. But instead, the court declined to offer an opinion and  
319 remanded the case back to the lower court. And the Supreme  
320 Court's inaction leaves the status quo in place. Bad  
321 Samaritans, who facilitate the most egregious and heinous  
322 activities, continue to receive protection from a statute  
323 intended to promote decency on the Internet.

324       Unfortunately, the successful use of Section 230 as a  
325 shield in court has emboldened more companies to use the  
326 statute in ways far beyond its initial aims. Just recently,  
327 OneVoice, a provider, invoked it to evade liability for  
328 fraudulent robocalls.

329       Now, despite all of this, some courts have started to  
330 more closely scrutinize the limits of the Section 230 shield.

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331 And while these cases do not always result in platforms  
332 ultimately being held legally liable for harm, they have shed  
333 light on the important distinctions between third-party  
334 content and the actions of the platforms themselves.  
335 Moreover, the recent success of these claims has poured cold  
336 water on the argument that limiting Section 230 immunity and  
337 allowing consumers to successfully sue social media platforms  
338 will destroy the Internet as we know it.

339       However, this slow-moving, piecemeal approach is  
340 unsustainable. As one circuit court judge wrote in  
341 considering Gonzalez versus Google \_ and I quote \_ "There is  
342 no question that Section 230 shelters more activity than  
343 Congress envisioned it would.'" The judge went on to say  
344 that questions around broad interpretation of Section 230  
345 immunity are \_ and I quote \_ "pressing questions that  
346 Congress should address.'" And today marks a first step in  
347 trying to find a bipartisan solution to the Section 230  
348 problem.

349       So the get-out-of-jail-free card enjoyed too often by  
350 Big Tech as an extraordinary protection afforded to almost no  
351 other industry. This protection is not appropriate, and it

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352 has to be reformed. While online platforms have been a  
353 positive force for free speech and the exchange of ideas, too  
354 often they function more like funhouse mirrors, distorting  
355 our discourse and reflecting our worst qualities. And the  
356 sad reality is this is often by design. Because the  
357 platforms are not passive bystanders, they knowingly choose  
358 profits over people and use Section 230 to avoid any  
359 accountability with our children and our democracy paying the  
360 price.

361 So I am hopeful that after hearing from these experts  
362 today we can work together on long-overdue fixes to Section  
363 230. I look forward to the discussion.

364 [The prepared statement of Mr. Pallone follows:]

365

366 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

367

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368           \*Mr. Pallone. I did want to say that I saw that  
369 professor \_ or Dr. Allison Stinger \_ or Stanger, I should say  
370 \_ is a professor of international politics and economics at  
371 my alma mater, Middlebury College in Vermont.

372           Good to see you. I have to say that when I was there I  
373 only took one course in Intro to Political Science with  
374 Murray Dry. But I was the head of the student government, so  
375 I did get my start there.

376           [Laughter.]

377           \*Mr. Pallone. But thank you, Mr. Chairman, I yield  
378 back.

379           \*Mr. Latta. The gentleman yields back.

380           How did you do as the head of the student government?

381           \*Mr. Pallone. Oh, well, we \_ you don't really want to  
382 hear this.

383           [Laughter.]

384           \*Mr. Pallone. This was a very tumultuous time, but I  
385 won't say because it was so long ago. I don't want to reveal  
386 my age \_

387           \*Mr. Latta. Oh, okay.

388           \*Mr. Pallone. \_ tell the professor how long ago it was.

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389 I graduated in 1973. She probably wasn't even born.

390 [Laughter.]

391 \*Mr. Latta. The gentleman yields back the balance of  
392 his time. This concludes member opening statements.

393 The chair reminds members that, pursuant to the  
394 committee rules, all members' opening statements will be made  
395 part of the record.

396 We want to thank our witnesses for being here today to  
397 testify before the subcommittee. Our witnesses will have  
398 five minutes to provide any opening statements, which will be  
399 followed by questions from our members.

400 Our witnesses today before us are Dr. Mary Anne Franks,  
401 professor of law and intellectual property, technology, and  
402 civil rights at George Washington University Law School; Dr.  
403 Mary Graw Leary, professor of law at the Catholic University  
404 America School of Law, and a visiting professor of law at the  
405 University of Georgia School of Law; and Dr. Allison Stanger,  
406 professor of international politics and economics at  
407 Middlebury College.

408 I would like to note for our witnesses that you have a  
409 timer light on the table that will turn yellow when you have

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410 one minute remaining and will turn red when your time has  
411 expired.

412           And before we get started, before speaking, if you would  
413 want to, pull your mikes up close.

414           And Dr. Franks, you are recognized for five minutes.

415 And again, thank you for being with us today.

416

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417 STATEMENT OF MARY ANNE FRANKS, PH.D., PROFESSOR OF  
418 INTELLECTUAL PROPERTY, TECHNOLOGY, AND CIVIL RIGHTS LAW,  
419 GEORGE WASHINGTON UNIVERSITY LAW SCHOOL; MARY GRAW LEARY,  
420 PROFESSOR OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA SCHOOL  
421 OF LAW, AND VISITING PROFESSOR OF LAW, THE UNIVERSITY OF  
422 GEORGIA SCHOOL OF LAW; AND ALLISON STANGER, PH.D., PROFESSOR  
423 OF INTERNATIONAL POLITICS AND ECONOMICS, MIDDLEBURY COLLEGE  
424

425 STATEMENT OF MARY ANNE FRANKS

426

427 \*Dr. Franks. Thank you very much.

428 Section 230 is often referred to as the 26 words that  
429 created the Internet. It is a really catchy description, but  
430 it is also a really revealing one. When you glance at  
431 Section 230, you realize that it is a lot longer than 26  
432 words. It has got multiple sections, subsections that detail  
433 congressional findings, policy objectives, definitions,  
434 exceptions, and so on. And all in all, it runs about 1,000  
435 words. The particular 26 words that are credited with the  
436 creation of the Internet come from section C, the law's  
437 operative provision. And those words are, "No provider or



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438 user of an interactive computer service shall be treated as  
439 the publisher or the speaker of any information provided by  
440 another information content provider.''

441 This provision, (c)(1), is indeed 26 words long, and it  
442 is true that this single, isolated subsection has played an  
443 essential role in creating the Internet as we know it today.  
444 That is, it has been sweepingly interpreted to allow tech  
445 companies to avoid liability for a vast array of harms  
446 inflicted by their products and their services, including  
447 life-destroying harassment, sexual exploitation, deadly  
448 misinformation, and violent radicalization. This dystopian  
449 result has been made possible by divorcing those 26 words  
450 from the rest of the law's text, its context, its title, its  
451 history, and its purpose.

452 The title of the operative provision is "Protection for  
453 Good Samaritan Blocking and Screening of Offensive  
454 Material.'" Good Samaritan laws are common throughout the  
455 United States, and they have a specific structure. They  
456 immunize bystanders from liability when those bystanders  
457 engage in voluntary, good-faith efforts to assist those in  
458 need in the hopes of encouraging people to act like Good

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459 Samaritans. Subsection C two of Section 230 does exactly  
460 this for the Internet. It provides immunity from civil  
461 liability to providers and users of interactive computer  
462 services for actions voluntarily taken in good faith to  
463 restrict access to or the availability of harmful content.

464 When courts interpret Section 230(c)(1)'s prohibition  
465 against treating interactive computer service providers as  
466 the publishers and speakers of other information content  
467 providers and they treat that as bestowing the same immunity  
468 not only on indifferent bystanders but on those who  
469 contribute to or even profit from harmful content, they  
470 render the entire statute incoherent.

471 This can be illustrated through reference to the  
472 original biblical parable of the Good Samaritan. A traveler  
473 is beaten by robbers and left half dead by the side of the  
474 road. A priest sees him and steps over to the other side. A  
475 Levite does the same. And then finally, a man from Samaria  
476 sees the injured traveler and, even though it costs him time  
477 and it costs him money, he stops and he tends to the man's  
478 wounds. He takes him to an inn to receive further care.

479 If the Samaritan's voluntary good faith rescue attempts

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480 are unsuccessful or incomplete, or they cause unintentional  
481 harm, he is not liable. But it would make no sense to extend  
482 the same immunity to the priest or to the Levite who did  
483 nothing to help or, even more absurdly, to the robbers who  
484 assaulted the man to begin with. It would also not make  
485 sense to extend immunity to the innkeeper if he failed to  
486 provide safe premises for his guests.

487         Most people most of the time can face liability, not  
488 just when they intentionally cause harm or directly cause  
489 harm, but when they contribute to, even indirectly, to harm.  
490 Shopkeepers can be held responsible if their premises are  
491 unsafe. Auto manufacturers can be sued for faulty designs.  
492 Hospitals can be sued for botched surgeries.

493         As Justice Kagan asked during oral argument during last  
494 year's Section 230 case, *Gonzalez v Google*, every other  
495 industry has to internalize the costs of its conduct. Why is  
496 it that the tech industry gets a pass? The answer that is  
497 sometimes given is that the business of the tech industry is  
498 speech, and that anything less than sweeping immunity will  
499 mean the end of the Internet, as well as the end of free  
500 speech as we know it. But that answer is flawed in at least

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501 three ways.

502       The first is that Section 230 has been invoked to  
503 absolve tech companies of responsibility for far more than  
504 speech: illegal firearms transactions, credit card  
505 transactions, faulty dog leashes.

506       Second, the tech industry is far from the only speech-  
507 focused industry. Newspapers, booksellers, television  
508 stations, universities, they are all in the business of  
509 speech, and they can all be sued sometimes for harmful  
510 speech.

511       And finally, while some groups may be enjoying free  
512 speech under the Section 230 status quo, especially  
513 billionaires, White supremacists, conspiracy mongers, this  
514 freedom is not shared equally across society. Unchecked  
515 sexual abuse, harassment, and threats have a silencing  
516 effect, especially on vulnerable groups, especially on women  
517 and minorities, which pushes them out of the public sphere  
518 and undermines their full participation in society.

519       Last year in *Gonzales*, the Supreme Court made clear that  
520 if Section 230 needs to be clarified it is up to Congress to  
521 do it, and hopefully before the 26 words that created the

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522 Internet destroy everything else. Thank you.

523 [The prepared statement of Dr. Franks follows:]

524

525 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

526

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527           \*Mr. Latta. Thank you very much.

528           Professor Graw Leary, you are recognized for five

529 minutes.

530

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531 STATEMENT OF MARY GRAW LEARY

532

533 \*Ms. Leary. Thank you. Thank you, Chair Rodgers, Chair  
534 Latta, and Ranking Member Matsui, and members of the  
535 subcommittee for having this important hearing.

536 I have to mention, being a lawyer, the views expressed  
537 of mine are not those of the Catholic University of America  
538 or the University of Georgia.

539 Narrow, limited immunity that is designed to prevent the  
540 proliferation of explicit material to prevent child abuse, to  
541 prevent exploitation, or to protect platforms from good-faith  
542 removal of such material is completely different from near-  
543 absolute immunity, de facto near absolute immunity, for one  
544 industry for a host of actions and conduct well beyond the  
545 removal of this material. It is entirely different. The  
546 former is what was intended in 1996, and the latter is what  
547 we have today.

548 Section 230 cannot properly be understood unless we  
549 understand its context, and its context is really beyond  
550 dispute. It was developed as part of a larger landscape  
551 having to do primarily, although not exclusively, with how to

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552 best shield people and children from explicit conduct and  
553 harmful material. And while some would like to act as though  
554 it is a standalone piece of legislation meant solely for a  
555 growing, vibrant Internet, it is not. And that reality of  
556 the background is reflected in its legislative history, its  
557 text, and the contemporaneous media coverage at the time.

558 As this body well knows, Congress was attempting first  
559 to update the 1934 Communications Act dealing with this new  
560 medium, and Congress had the wherewithal to see that the  
561 guardrails that were in place in the old medium needed to be  
562 translated into the new medium.

563 Two visions came out, as I lay in detail in my written  
564 comments: from the Senate, the Communications Decency Act;  
565 and from the House, the Internet Freedom and Family  
566 Empowerment Act. The discussion between these two pieces of  
567 legislation was not whether to protect and limit this  
568 material, but how best to do it. And it is within that  
569 backdrop that we have to understand Section 230 of the  
570 Communications Decency Act, and the conference committee  
571 understood that and put them together. And it cannot be  
572 divorced from this backdrop. It is in title 5 of the Act,



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573 obscenity and violence. It is in Section 230, protection for  
574 private blocking and screening of offensive material.

575         And the particular issue, as has been pointed out by my  
576 colleagues, is protection for Good Samaritan blocking and  
577 screening of offensive material. The debate was how best to  
578 stop this material. The promise was made by the technology  
579 companies about their efforts, which they guaranteed would  
580 make it a safe environment. And that is not what we have  
581 today.

582         And why don't we have it today? Because in litigation  
583 throughout this country it has been interpreted in a way that  
584 gives de facto near-absolute immunity. And this has resulted  
585 in many harms that have been laid out by my colleagues. The  
586 result has been platforms profiting from ventures to engage  
587 in sex trafficking, illegally selling firearms, apps with  
588 design flaws that allow predators unfettered access to  
589 children, CSAM and non-consensual pornography, fentanyl. All  
590 seek and receive immunity for their actions and profit from  
591 this exploitation.

592         A look at CSAM alone highlights in hard numbers the  
593 world \_ the harms of this Act in \_ outside the courthouse.

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594 In 1998, when the CyberTipline was created, the National  
595 Center for Missing and Exploited Children received about  
596 4,500 reports. In 2023 they received 36 million reports  
597 containing more than 105 million pieces of content, and today  
598 the CyberTipline averages about 99,000 reports a day. That  
599 is the harm outside the courts.

600 The harm inside the courts is equally devastating, and I  
601 should say inside the courthouse, not the court rooms,  
602 because victim survivors, attorneys general, aggrieved  
603 parties are denied access to courtrooms, denied their  
604 opportunity in court to litigate this. Why? Because of this  
605 broad immunity that is asserted as a litigation position and  
606 a policy position, and the time has long passed to do these  
607 reforms.

608 The motto of Meta was once, "Move fast and break  
609 stuff.'" That also sounds catchy until you realize what is  
610 being broken is people and the legal regime designed to  
611 protect them.

612 I look forward to your questions.

613 [The prepared statement of Ms. Leary follows:]

614

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615 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

616

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617           \*Mr. Latta. And thank you very much for your testimony.

618           And Dr. Stanger, you are recognized for five minutes.

619

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620 STATEMENT OF ALLISON STANGER

621

622 \*Dr. Stanger. Thank you very much. It is a real honor  
623 and privilege to be appearing before you here today, and I am  
624 absolutely thrilled to be participating in a bipartisan  
625 hearing. I would like to direct our collective attention not  
626 only to the past and the present, but to the future with my  
627 remarks.

628 As we have heard today, Section 230 was designed to  
629 unleash and protect Internet innovation, thereby maintaining  
630 America's competitive edge in cyberspace. It provided the  
631 runway for the takeoff of companies like Google, Twitter, and  
632 Facebook. And it created the Internet as we today know it,  
633 where extremely powerful companies are effectively shielded  
634 from liability. No other American corporations, especially  
635 ones with so much power, benefit from such blanket exemption  
636 from liability.

637 Today Section 230's unintended consequences have had a  
638 negative impact on both our children and our democracy \_  
639 again, as we have already heard. So I would like to take  
640 this in a slightly different direction, and think about

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641 reforming Section 230 by repealing those 26 words that have  
642 been mentioned. If we did so, what might we expect for free  
643 speech and commerce? And I see net positives in both  
644 categories.

645 First, for free speech, it no longer makes sense to  
646 speak of free speech in traditional terms. The Internet has  
647 so transformed the very nature of the speaker that the  
648 definition of speech itself has changed. Without Section  
649 230, companies would be liable for the content on their  
650 platforms. At a stroke, content moderation would be a vastly  
651 simpler proposition. Companies need only uphold the First  
652 Amendment, and the courts would develop the jurisprudence to  
653 help them do that, rather than to put the onus of moderation,  
654 as it is today, entirely on companies.

655 It is sometimes imagined that there are only two  
656 choices: a world of viral harassment or a world of top-down  
657 smothering of speech. But there is a third option: a world  
658 of speech in which viral harassment is tampered \_ tamped  
659 down, but the ideas are not. Virality might come to be  
660 understood as an enemy of reason and human values. I think  
661 we Americans can have culture and conversations without a mad

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662 race for total attention. Without Section 230, recommender  
663 algorithms and the virality they spark would be less likely  
664 to distort speech.

665 Second, with respect to commerce, without Section 230,  
666 existing large social media companies would have to be \_  
667 adapt. They would be forced to do so. Decentralized  
668 autonomous organizations such as Bluesky and Mastodon would  
669 become more attractive.

670 The emergent DAO social media landscape should serve to  
671 put further brakes on virality, allowing a more regional  
672 social media ecosystem to emerge, thereby creating new demand  
673 for local media. In an ideal world, these networks of DAOs  
674 Decentralized Autonomous Organizations, would comprise a new  
675 fediverse where users would have greater choice and control  
676 over the communities of which they choose to be a part. The  
677 problems of virality, harassment, and exploitation of our  
678 children could be met head on.

679 Third, there would be positive net consequences for  
680 national security. I can speak on that in the questions if  
681 you have interest in that topic.

682 To conclude, while Section 230 might have been

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683 considered more a target for reform rather than repeal prior  
684 to the advent of generative AI, it can no longer be so.  
685 Social media could be a business success, even if its content  
686 was nonsense. AI cannot. An AI model is only as good as the  
687 ideas and data it is trained on. The best AI will come out  
688 of a society that prioritizes quality conversation and  
689 communication. While an AI model can tolerate a significant  
690 amount of poor-quality data, there is a limit. It is  
691 unrealistic to imagine a society mediated by mostly terrible  
692 communication where that same society enjoys unmolested,  
693 high-quality AI.

694 A society must seek quality as a whole, as a shared  
695 cultural value in order to maximize the benefits of AI. Now  
696 is the best time, I would argue, for the tech business to  
697 mature and develop business models based on quality. We can  
698 nudge them in this direction by repealing Section 230.

699 Thank you for your time, and I welcome your questions.

700 [The prepared statement of Dr. Stanger follows:]

701

702 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

703



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704           \*Mr. Latta. Thank you very much, and that will conclude  
705 our witnesses' opening statements, and I will now recognize  
706 myself for five minutes.

707           Professor Franks, during your testimony you detail how  
708 the courts have interpreted Section 230 too broadly. Please  
709 explain how the interpretation of Section 230 has evolved  
710 over this time, and to what extent you think the courts have  
711 applied 230 too broadly, too.

712           \*Dr. Franks. Thank you. What we have seen is that this  
713 very limited immunity that was provided clearly in Section \_  
714 subsection (c)(2) has been sort of transferred over to  
715 (c)(1), and then expanded. Instead of saying, for instance,  
716 that you can't treat a particular intermediary as if it were  
717 the speaker of someone else's speech, we now see every kind  
718 of claim \_ speech claims, non-speech claims, basically  
719 anything one can imagine \_ being treated as though it were  
720 clear that any responsibility that the intermediary might  
721 have is foreclosed by (c)(1).

722           And that, I think, does not make any sense, of course,  
723 in the context of the statute, but it has also meant that, in  
724 terms of incentives for the industry, it is essentially

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725 saying to the industry, "You can participate in any kind of  
726 reckless, profit-maximizing behavior that you want. It  
727 doesn't matter what the consequences are for you, because you  
728 will not have to pay for them.''

729 \*Mr. Latta. Thank you very much. Thank you.

730 Professor Leary, how can we strike a balance between  
731 protecting free expression and holding Big Tech accountable  
732 for dangerous content that it promotes under Section 230?

733 \*Ms. Leary. I think the balance is struck, similar to  
734 what Dr. Sanger was saying, by the reality of the  
735 marketplace. This is the only industry that things are so  
736 out of balance.

737 So one of the ways that we can strike the balance of  
738 free speech is to really focus on the harms, the harms that  
739 are caused by Section 230. And one of the free speech  
740 aspects that is often overlooked in these discussions is this  
741 access to court, the access to civil rights from parties who  
742 are challenging the actions of these companies, and they have  
743 been completely denied and shut out.

744 So when we talk about balancing free speech, I think we  
745 have to think about all the speech that has been shut out as

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746 a result of Section 230, all the cases that are closed off at  
747 immunity, as opposed to that are closed off after a full  
748 litigation of hearings.

749 \*Mr. Latta. Thank you.

750 Professor Stanger, you said something kind of  
751 interesting before you closed about \_ talking about national  
752 security. Would you want to speak to that, what you were  
753 referring to?

754 \*Dr. Stanger. Yes, I am happy to do so. I think it is  
755 important to realize that our Internet is precisely unique  
756 because it is so open, and that makes it uniquely vulnerable  
757 to all sorts of cyber attacks.

758 Just this week we saw an extraordinarily complicated  
759 plot that is most likely done by China, Russia, or North  
760 Korea that could have blown up the Internet as we know it.  
761 If you want to look up XZ Util, Google that and you will find  
762 all kinds of details. They are still sorting out what the  
763 intention was. It is extraordinarily sophisticated, though.

764 So I think that the idea that we have a Chinese company  
765 where data on American children is being stored and  
766 potentially utilized in China, it can be used to influence

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767 our children, it can be used in any number of ways, no matter  
768 what they tell you. So I very much support and applaud the  
769 legislation to repeal \_ not to repeal, but to end TikTok's  
770 operations in the United States.

771 The national security implications are extraordinary.  
772 Where the data is stored is so important, and how it can be  
773 used to manipulate and influence us is so important.

774 And I think the next frontier that \_ I will conclude  
775 with this \_ for warfare is in cyberspace. It is where weak  
776 countries have huge advantages. They can pour resources into  
777 hackers who could really blow up our infrastructure, our  
778 hospitals, our universities. They are even trying to get, as  
779 you know, into the House. So \_ this House right here. So I  
780 think repealing Section 230 is connected to addressing a host  
781 of potential harms.

782 \*Mr. Latta. In my last 35 seconds let me ask one last  
783 follow-up on this, then.

784 You know, when you are talking about our national  
785 security and the cyber attacks and, of course, TikTok, which,  
786 as the chair mentioned, that we passed out of here, how  
787 vulnerable are we? Are we winning this race? Are we losing

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788 this race? In my last 14 seconds.

789 \*Dr. Stanger. We are stars in innovation, and so we  
790 want to keep that advantage. But our very openness makes us  
791 vulnerable. China doesn't have to worry about freedom of  
792 speech.

793 \*Mr. Latta. Yes.

794 \*Dr. Stanger. So they get security. We have got to  
795 balance the two.

796 \*Mr. Latta. Well, thank you very much. My time is  
797 expired, and I now recognize \_

798 \*Dr. Stanger. You are welcome.

799 \*Mr. Latta. \_ the gentlelady from California's 16th  
800 district for 5 minutes for questions.

801 \*Ms. Eshoo. Thank you, Mr. Chairman, and thank you,  
802 witnesses, for not only your written testimony, but your  
803 spoken testimony today.

804 Professor Leary, you discussed the original intent of  
805 Section 230. It was born out of an intent to limit the  
806 proliferation of indecent and harmful materials on the  
807 Internet, specifically "to protect children from obscene and  
808 indecent material.'" You argue that Congress's original

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809 intent has been thwarted by the court's erroneously reframing  
810 and de-emphasizing these purposes, and therefore turning 230  
811 on its head, and providing de facto near-absolute immunity  
812 for online platforms.

813         What do you think Congress needs to do to return to  
814 Section 230 to its original intent, while also necessarily  
815 protecting the free speech rights of the platforms to  
816 moderate content?

817         And let me just throw another question out there, and it  
818 may surprise you. Are any of you aware of the key companies  
819 putting out on the table what they are willing to do to  
820 address so many of the things that are now almost commonplace  
821 in terms of understanding and damage, et cetera, et cetera?

822         But we will go to Professor Leary and then the other \_  
823 and any other witness, if you can answer the question I just  
824 posed.

825         \*Ms. Leary. Thank you, Congresswoman. Certainly, I  
826 think keeping the protection for the Good Samaritan, I think  
827 that that should stay. I think that that is a really  
828 effective tool that Congress came up with.

829         However, when we look at this idea of publisher and how

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830 it has been so twisted well beyond what a publisher would  
831 ever be considered doing, I think that is really where the  
832 problem is. As has been pointed out already today, the  
833 standard of "know or should have known," the \_ either the  
834 design was harmful, the content is happening on your website,  
835 whatever the specific claim, in my view that is the standard  
836 most businesses have to deal with. And why this industry  
837 doesn't have to deal with that in either its design or its  
838 execution of its products, I think, is troubling.

839 And that standard has, as has been conceded by the other  
840 side, would be a defense at trial. And to your point, they  
841 would be able to defend themselves. Plaintiff victim-  
842 survivors would be able to prove their cases. And as Justice  
843 Thomas pointed out in Malwarebytes, this isn't to say that  
844 tech will lose every time. What this is to say is they will  
845 have their day in court.

846 Very quickly, on your last point \_

847 \*Ms. Eshoo. Wait \_ that is all right, go ahead.

848 \*Ms. Leary. Just \_

849 \*Ms. Eshoo. Quickly.

850 \*Ms. Leary. I think it is insightful in 2020, at a

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851 hearing on the Senate side, the representative of one of the  
852 trade associations for tech was asked that very question:  
853 What are you doing for your members? What are you putting  
854 out? And there was no answer for the members \_

855 \*Ms. Eshoo. Well, do you know of anything since then?  
856 That was a long time ago.

857 \*Ms. Leary. Well, I know that they are representing  
858 some things that often are so bogged down in detail they  
859 don't actually get to solving the problem, because immunity  
860 for Section 230 is what allows them to function with  
861 impunity.

862 \*Ms. Eshoo. Yes.

863 \*Ms. Leary. And have massive profits.

864 \*Ms. Eshoo. Well, I am struck by the old adage of  
865 addressing alcoholism: the patient has to acknowledge that  
866 it is the case. Unless you acknowledge something, you are  
867 not going to pursue the cure or the fix.

868 Dr. Stanger, I am very interested, as a co-chair of the  
869 House AI Caucus, and also as a member \_ and we have other  
870 distinguished members on this committee, Mr. Obernolte,  
871 Congresswoman Cammack \_ Kat, okay, thank you, Kat \_ and



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872 others that serve on the bipartisan AI task force. Can you  
873 tell us why you believe it is critical to reform Section 230  
874 \_ I am fascinated by this \_ in light of generative AI?

875 \*Dr. Stanger. Yes. Very simply, all the harms we have  
876 talked about are just exponentially increased by generative  
877 AI, which is automating disinformation, automating these  
878 harms, making them harder to stop.

879 \*Ms. Eshoo. Because of the scraping?

880 \*Dr. Stanger. Because of the fact that they can move so  
881 quickly to generate new deep fakes and so forth. Not so much  
882 the scraping, that is a separate issue. But it is important  
883 to realize that.

884 I just want to also say two things, if I may.

885 \*Ms. Eshoo. Go ahead.

886 \*Dr. Stanger. One, in regard to your last question \_

887 \*Ms. Eshoo. We are over time, but go ahead.

888 \*Dr. Stanger. \_ Congresswoman, I have traveled around  
889 the country this past year talking about this argument to  
890 repeal Section 230, and I have been all over Silicon Valley  
891 saying this, and the reaction I get is complete outrage in  
892 public. But if you talk to people in private, they say, "We

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893 will be all right.''

894           And the second point I would make is that Big Tech is  
895 not a monolith. We are seeing some divisions among the  
896 companies on this issue. Now Eric Schmidt just came out last  
897 week for repealing Section 230. So it is an interesting  
898 moment for Congress to act.

899           \*Ms. Eshoo. Thank you. With that, Mr. Chairman, I  
900 yield back.

901           \*Mr. Latta. Thank you very much. The gentlelady's time  
902 has expired, and the chair now recognizes the chair of the  
903 full committee, the gentlelady from Washington, for five  
904 minutes for questions.

905           \*The Chair. Dr. Franks, earlier this year a U.S.  
906 appeals court heard a case on whether TikTok could be sued  
907 for causing a 10-year-old girl's death by promoting a deadly  
908 blackout challenge that encouraged her to choke herself.  
909 TikTok pushed this dangerous content to this child's For You  
910 page. Do you think this type of personalized amplification  
911 or promotion should receive Section 230 protections?

912           And how can Congress reform Section 230 to protect  
913 children from this deadly content?

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914           \*Dr. Franks. Thank you. So I think that Section 230's  
915 benefit of immunity should apply very narrowly for two kinds  
916 of situations. One is when the platform is taking active  
917 steps to mitigate against harm. So the facts that you are  
918 describing clearly do not fit this, this is promotion of harm  
919 or this is indifference to harm rather than active  
920 intervention. The other narrow view is \_ in (c)(1) is the  
921 question of whether or not someone is being treated as though  
922 they are the speaker for someone else's speech. And so in  
923 this case I don't think that this applies either. So I don't  
924 think that the facts, as you have described them, would be  
925 something that you should get immunity for.

926           The problem has been that the interpretation, broadly  
927 speaking, has been that, in fact, in situations like this,  
928 when a company can say, "This wasn't our direct issue, we  
929 didn't directly do this," that too often has been enough to  
930 get that case dismissed. And so I think that is what needs  
931 to be clarified at this point. Even though the text of  
932 Section 230 itself does not demand that result, there has  
933 been so much case law at this point that seems to point in  
934 that direction that (c)(1) really does need to be clarified

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935 to include limitations that say you cannot use that kind of  
936 argument, you cannot get this kind of immunity from civil  
937 liability any time you want.

938         There has to be certain limitations. And those  
939 limitations, in my view, should be including things like you  
940 can't solicit it, you can't encourage it, you can't profit  
941 from it, and you cannot be deliberately indifferent to it.

942         \*The Chair. Thank you.

943         Professor Leary, I mentioned in my opening statement  
944 that, as a mom, I am very concerned about Big Tech and its  
945 impact on our children. I want to thank you for your work in  
946 drawing attention to the exploitation of women and children  
947 online. How has activities such as online sex trafficking,  
948 exploitation, and pornography been allowed to exist and grow  
949 due to Section 230 protections?

950         \*Ms. Leary. Thank you, Congresswoman. Well, I think we  
951 have heard the answer again and again today, haven't we? And  
952 that is courts taking what is a fairly clear text and turning  
953 it on its head. And they are being led to that point by  
954 litigants who are arguing for this massively broad immunity.

955         So what we have seen is courts in the First Circuit very

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956 famously a few years ago acknowledging that, even if we  
957 accept the plaintiffs in that case, three girls who were  
958 trafficked on Backpage, even if we accept that as true, that  
959 is not what Section 230 was designed \_ that is what Section  
960 230 was designed to protect.

961 Courts have allowed for direct actions, partnering with  
962 illegal entities or profiting from them, to exploit children  
963 in a number of ways. And they have simply regarded those  
964 somehow as a publishing action, which it is absolutely not.  
965 So that is how Section 230 has been abused in that way and  
966 denying people the opportunity to get into that information  
967 where we can show how these companies are, in fact, engaged  
968 in that activity.

969 \*The Chair. Thank you.

970 Dr. Stanger, how might reforms to Section 230 impact  
971 smaller tech companies and startups compared to larger, more  
972 established platforms who have benefitted from liability  
973 protections?

974 \*Dr. Stanger. That is a great question. There is some  
975 concern sometimes expressed from small businesses that they  
976 are going to be the subject of frivolous lawsuits, defamation

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977 lawsuits, and they can be sued out of business even though  
978 they have defamed no one. I am less concerned about that,  
979 because if we were to repeal section (c)(1) of section, you  
980 know, Section 230, those 26 words, I think the First  
981 Amendment would govern, and we would develop the  
982 jurisprudence to deal with small business in a more refined  
983 way.

984 I think, if anything, small businesses are better \_ in a  
985 better position to control and oversee what is on their  
986 platforms than these monolithic, large companies we have  
987 today. So with a bit of caution, I think that could be  
988 addressed.

989 \*The Chair. Okay. In my time remaining, Dr. Franks, I  
990 wanted to go back to this question of Section 230 applying to  
991 generative AI technologies such as ChatGPT, and if there is  
992 anything you want to add to the impacts there that you see.

993 \*Dr. Franks. I would say two things about this. One,  
994 in terms of the harms that we are seeing, especially for  
995 sexual exploitation. This is one of the most serious \_  
996 clearly, an urgent situation already in terms of the damage  
997 that it is doing to women and girls in particular. And we

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998 are seeing that this is a problem not just of the apps and  
999 the services themselves, but also of the distribution  
1000 platforms like X or Facebook, or wherever that material  
1001 happens to end up, which highlights the fact that we need to  
1002 be thinking about both of those angles of the problem.

1003 And to make clear that that should seem \_ should be the  
1004 case that, textually speaking, that sort of product,  
1005 generative AI, giving that sort of product in response to  
1006 inputs should not be the kind of thing \_ according to even  
1007 the current text of Section 230 should not receive immunity  
1008 because they are acting as their own information content  
1009 providers.

1010 \*The Chair. Right, okay. Thank you, everyone. I  
1011 appreciate your insights on this very important topic.

1012 I yield back.

1013 \*Mr. Latta. Thank you very much. The gentlelady yields  
1014 back, and the chair now recognizes the gentleman from New  
1015 Jersey, the ranking member of the full committee, for five  
1016 minutes for questions.

1017 \*Mr. Pallone. Thank you, Mr. Chairman.

1018 I have one question for each of you, so I am going to

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1019 ask you to spend about a minute-and-a-half in response. Let  
1020 me start with Dr. Stanger.

1021 I was going to say what are the consequences of our  
1022 failure to reform Section 230, but of course you say it  
1023 should be repealed. So maybe I should change that to say  
1024 what are the consequences of our failure to repeal Section 30  
1025 [sic], particularly for the health and well-being of young  
1026 people, our safety, our democracy.

1027 Of course, you could write a book on this, but in a  
1028 minute-and-a-half, if you could \_ I know you have touched on  
1029 it, but if you want to, elaborate a little.

1030 \*Dr. Stanger. Absolutely. I think it is \_ I am writing  
1031 a book called, "Who Elected Big Tech," and I just would want  
1032 to dispel one potential misunderstanding here, that big  
1033 companies performing content moderation follow their own  
1034 rules of service. You can show systematically that they  
1035 don't. It is a complicated affair. They have a big  
1036 challenge on their hand. They use some AI, but if you look  
1037 at what they really do, it is very politically connected to  
1038 events happening here or to things that are happening with  
1039 their rivals.



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1040           So the idea that content moderation is just proceeding  
1041 so smoothly, and this is going to get in the way of proper  
1042 content moderation I think is a myth we need to dispel. You  
1043 will hear it a lot from Silicon Valley. My research shows  
1044 that is not true.

1045           \*Mr. Pallone. All right, thank you. Then I wanted to  
1046 ask Dr. Franks about First Amendment.

1047           Do social media platforms serve a unique purpose  
1048 distinct from traditional media companies?

1049           And if not, why are First Amendment protections not  
1050 sufficient for these platforms, if you will?

1051           \*Dr. Franks. Social media platforms do serve \_ or you  
1052 could say that they serve a somewhat different purpose in  
1053 that they are engines of user-generated content. So when we  
1054 think about newspapers, newspapers are very heavily curated.  
1055 It is the responsibility of the newspaper itself to choose  
1056 and pick the articles. Whereas, the point in most cases of a  
1057 social media platform is to allow others to speak freely or  
1058 not freely, but allow others to speak.

1059           That being said, we certainly have other examples that  
1060 are very close to this kind of function, which is

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1061 booksellers, for instance, or television programs. Any kind  
1062 of television station that is going to have, for instance,  
1063 talk show hosts and have guests come on and give their  
1064 opinions, that too is someone else's speech. And so there is  
1065 nothing, I would say, unique about social media platforms,  
1066 than maybe that they do that more as their focus than other  
1067 types of industries. But it is not so unique that it  
1068 warrants having a completely different approach to their  
1069 business as we would have in any other industry.

1070           \*Mr. Pallone. Well, thank you.

1071           And then, Professor Leary, how would reforms to Section  
1072 230(c)(1) lead to social media companies taking more  
1073 responsibility for how their platforms are designed and  
1074 operated?

1075           \*Ms. Leary. Well, I think at this point they have been  
1076 using (c)(1) to say product design, that must also be a  
1077 publishing capabilities, which again defies reason. So I  
1078 think reforming that, or withdrawing it to preclude that kind  
1079 of an argument would be essential.

1080           And also, one thing that has resulted from this  
1081 immunity, as opposed to a defense, is we haven't developed

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1082 the jurisprudence that would naturally give guidance to  
1083 businesses. That has been stunted for the past nearly 30  
1084 years. Businesses today, when they want to make a decision  
1085 about how to go forward and balance all these things, look  
1086 and see, well, what do I know already? What are my  
1087 obligations already in this sort of real world? And how can  
1088 I do my costs and benefits to decide if I am going to go  
1089 forward and how I am going to do that?

1090 By having (c) (1) in place, giving such broad immunity,  
1091 turning things on its head, it has precluded us from being  
1092 able to see where those guardrails are.

1093 \*Mr. Pallone. All right. Thank you all. Thank you so  
1094 much. It is very enlightening.

1095 \*Mr. Latta. Thank you. The gentleman yields back the  
1096 balance of his time, and the chair now recognizes the  
1097 gentleman from Florida's 12th district for five minutes for  
1098 questions.

1099 \*Mr. Bilirakis. Thank you very much, Mr. Chairman. I  
1100 appreciate it very much. I really want to thank the panel,  
1101 as well.

1102 Whenever we talk about Section 230 or online privacy

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1103 protections, I am particularly focused on how we best protect  
1104 our children, our nation's children. Children and teens  
1105 spend the most of their time on the Internet, and they are  
1106 some of the most manipulated, unfortunately.

1107 In a hearing a few years ago I had a discussion with  
1108 witnesses on how Section 230 interacts with child  
1109 exploitation online. We explored how special immunities are  
1110 granted to online platforms that don't exist for brick or  
1111 mortar [sic] stores when it comes to a business knowingly  
1112 exploiting our children and facilitating child pornography.  
1113 I want to expand on this very serious issue.

1114 A 2019 New York Times podcast reported that the FBI has  
1115 to prioritize sexual exploitation cases of infants and  
1116 toddlers because it cannot effectively respond to all  
1117 reports. This leaves older children less protected and,  
1118 therefore, more likely to be repeatedly abused,  
1119 unfortunately. Ms. Leary, if the FBI cannot pursue a case  
1120 against a platform due to lack of resources under current  
1121 law, can we \_ can a state attorney general file criminal  
1122 charges under state law, or would Section 230 block that  
1123 case, as well?

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1124           \*Ms. Leary. Thank you, Congressman. The way that  
1125 Section 230 has been interpreted, the answer would be no.  
1126 There is a provision after these 26 words we have talked  
1127 about which says that no state law inconsistent with this  
1128 should be followed. It is not phrased quite like that. And  
1129 courts have interpreted that to say states can't enforce  
1130 their own criminal laws.

1131           And you are quite right. Child exploitation in this  
1132 country, in part due to these platforms, is exploding. And  
1133 we need to have multiple pressure points, state and local,  
1134 Federal and not, civil litigation, criminal litigation. And  
1135 by telling states they cannot enforce their own criminal laws  
1136 or their own regulations has a very challenging effect on  
1137 these online forms of exploitation.

1138           \*Mr. Bilirakis. So again, just like with lawsuits  
1139 brought by victims of child sexual exploitation online, there  
1140 is no reason why we should be giving special immunity, in my  
1141 opinion, on online platforms where they facilitate child  
1142 pornography. I agree with you. It is so shameful that our  
1143 own laws prevent state AGs \_ it is unbelievable \_ from  
1144 prosecuting child pornography facilitators when the FBI

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1145 cannot handle the cases themselves.

1146 Let's close the loophole, folks. Let's close the  
1147 loophole and get more cops on the street to stop these  
1148 predators.

1149 So my second question is, Dr. Franks, Section 230(c)(2)  
1150 states that a provider is protected under the good-faith  
1151 standard for material that is obscene or otherwise  
1152 objectionable. Does this mean that the provider can shield  
1153 itself from liability simply because at least one of its  
1154 users has flagged content as personally objectionable?

1155 And if so, would that provider protection still exist if  
1156 the user flagged the post in bad faith, perhaps because they  
1157 didn't agree with the position of the original poster?

1158 \*Dr. Franks. So the protections of (c)(2) would not be  
1159 dependent on users at all, so it would not need to rest on  
1160 whether or not a user has said this is objectionable. The  
1161 (c)(2) provision says that if the provider themselves finds  
1162 that this is objectionable, or any of the other obscene,  
1163 lewd, lascivious, et cetera, any of those kinds of  
1164 characteristics, it is allowed to restrict access to that  
1165 content and cannot face civil liability for that basis.

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1166           And I think it is also important to note that, even  
1167 though that is a procedural protection that is important in  
1168 (c) (2), this is really building on a foundation that actually  
1169 reinforces something about First Amendment law, as well.  
1170 Namely, that these social media companies, while they might  
1171 not seem like it, they are private actors in the sense that  
1172 they are not government agencies, they are not government  
1173 agents. And so the First Amendment operates for them both in  
1174 terms of what they can say and also what they don't have to  
1175 say. And so the First Amendment already gives them the power  
1176 to take things down, to choose not to post speech, to choose  
1177 to restrict access. They can do all of those things based on  
1178 their powers under the First Amendment, and then (c) (2) gives  
1179 them extra procedural protection.

1180           \*Mr. Bilirakis. Okay, I guess I have got to yield back.  
1181 Thank you very much, Mr. Chairman. I appreciate it.

1182           \*Mr. Latta. Well, thank you very much. The gentleman  
1183 yields back, and the chair now recognizes the gentleman from  
1184 Florida's 9th district for five minutes for questions.

1185           \*Mr. Soto. Thank you, Chairman. Way back in 1996,  
1186 Representatives Widen and Cox came down from the Capitol Hill

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1187 top with the two commandments of the Internet. Apparently,  
1188 Representative Eshoo was there too, which is pretty cool.

1189 [Laughter.]

1190 \*Mr. Soto. Thou shalt not treat an Internet provider as  
1191 a publisher of content posted by another on their platform,  
1192 and thou shalt not hold an Internet provider liable for  
1193 taking down content in good faith for various nefarious  
1194 reasons like obscenity, lewdness, illegality.

1195 Let me take you back a moment to 1996. The top Web  
1196 browser, Netscape Navigator. Remember those guys? Yahoo was  
1197 just created a year or two earlier. Google didn't exist as a  
1198 noun or a verb. Amazon was created just two years earlier,  
1199 and was known for mostly selling books. Facebook wouldn't  
1200 exist for another 8 years, and most people had dial-up  
1201 Internet connections from 28.8 to 33.6 kilobytes per second.  
1202 I was graduating from high school in 1996, to date myself,  
1203 and remember explaining to adults that the Internet is more  
1204 than email and sports scores.

1205 My point is it is time, right? It has been a while  
1206 since that last law passed, and so we need to review common-  
1207 sense reforms that deal with children, our identity, and



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1208 data, while also making sure we have enough space to promote  
1209 innovation.

1210 I don't take for granted the fact that the technology  
1211 industry is a robust part of our nation's competitiveness and  
1212 prosperity. We just need basic rules of the road as we go  
1213 forward. We are going to have the option to vote on national  
1214 comprehensive privacy reform and to protect our data and our  
1215 identities, and another bill to protect our kids. And these  
1216 are going to be important issues we work on.

1217 In central Florida we saw a young man, Alex Bugay, who  
1218 had his identity stolen online to make racist comments  
1219 towards a Georgia state representative at the time.  
1220 Obviously, it wasn't him. It cost him a research position at  
1221 a local hospital, jeopardized his matriculation at a local  
1222 university, and with no cause of action he was powerless to  
1223 take down volumes of false information.

1224 And since we are talking about alma maters, I am a proud  
1225 GW Law alumni. Welcome, Dr. Franks, we are proud to have you  
1226 here. For the record, I took Dr. Siegel's IP survey course.  
1227 It was brilliant, by the way. It would be great to hear from  
1228 you. What rights and causes of action do you believe are

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1229 just to protect citizens from identity theft? What should we  
1230 do to help out a constituent like Mr. Bugay?

1231 \*Dr. Franks. Thank you. I think, on the one hand, the  
1232 problem that you have articulated with that situation, that  
1233 you have someone out there who is committing an action that  
1234 is obviously harmful, and if the person knew who that was  
1235 perhaps they could try to seek relief from that person, but  
1236 because of the structure and the nature of many Internet  
1237 platforms that identity might be hidden \_ and this is  
1238 something that actually benefits many social media companies,  
1239 and so they actually encourage things like anonymity and a  
1240 lack of tracing.

1241 So that puts the person in the position of thinking  
1242 about other avenues. If you can't find the person who is  
1243 doing this to you, can you stop the distribution of the  
1244 harmful content? And there we went into this problem with  
1245 Section 230, because that is when social media companies will  
1246 say that this wasn't us, it was some user, and we are not  
1247 accountable for that.

1248 What we would need, in addition to not allowing Section  
1249 230 to necessarily be raised preemptively in those kinds of

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1250 situations, is also to remind ourselves that sometimes the  
1251 Internet has made things possible and harms possible that  
1252 were either not possible before or not possible quite in such  
1253 a dramatic manner. And that may be a situation where we need  
1254 to start thinking about targeted, new legislation for certain  
1255 types of harms.

1256           Impersonation laws right now, as they exist, are very,  
1257 very narrow. They mostly apply to people who are government  
1258 officials or police officers or a someone who is a medical  
1259 personnel. The average citizen doesn't have much to go on  
1260 when someone is impersonating them. And I think that  
1261 situations like the one you have described suggest that we  
1262 should be thinking very hard about whether we should change  
1263 that.

1264           \*Mr. Soto. Well, thank you, Dr. Franks. You know, I am  
1265 concerned about protecting our personal data, our identities,  
1266 and our kids, and looking forward to the chairman getting the  
1267 opportunity to look at some of these bills we will be voting  
1268 on pretty soon.

1269           Thanks, and I yield back.

1270           \*Mr. Latta. Thank you. The gentleman yields back, and

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1271 the chair now recognizes the gentleman from Michigan's 5th  
1272 district for five minutes for questions.

1273 \*Mr. Walberg. Thank you, Mr. Chairman, and thanks to  
1274 the panel for being here.

1275 And to my friend, Congressman Soto, 1996 I didn't come  
1276 down from the mountain, but I did have a bag phone that I  
1277 couldn't use, but no laptop.

1278 While Section 230 has grown a robust and innovative  
1279 Internet ecosystem in the United States nearly 30 years after  
1280 its enactment, it is time, clearly, that we look if the  
1281 current model is best serving American consumers and  
1282 businesses.

1283 Big Tech's behavior has become increasingly more  
1284 concerning, as you have indicated, Dr. Stanger, very  
1285 concerning. Illegal activity and harmful content seems to be  
1286 rampant on the platform, especially impacting the mental  
1287 health and safety of our children.

1288 My E&C colleagues and I are working to address the  
1289 catalyst of this issue, children's privacy, which is why this  
1290 week I introduced H.R. 7890, the Children and Teens Online  
1291 Privacy Protection Act, or COPPA 2.0. Together with

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1292 comprehensive privacy, COPPA 2.0 will help address the root  
1293 cause of the harmful algorithms and content online.

1294 But we also need to look at how companies treat that  
1295 content on their platforms. I want to thank the committee  
1296 for holding the hearing today to do just that.

1297 Professor Graw Leary, regarding protecting children  
1298 online, in your testimony you identified how 230 has given  
1299 near-absolute immunity to platforms that can be used to groom  
1300 and abuse minors, among many other harms. How \_ could you  
1301 expand on how Section 230 has contributed to challenges in  
1302 providing access to justice for victim survivors,  
1303 particularly in cases involving online harm or abuse?

1304 \*Ms. Leary. Sure, and piggybacking on Dr. Frank's  
1305 comments, right, we have situations in which victim survivors  
1306 \_ and you make an excellent point, Congressman.

1307 In all other aspects when we discuss youth, we talk  
1308 about the brain not being fully formed. All of the  
1309 information that we know about these really vulnerable  
1310 populations and these companies take advantage of that, and  
1311 offenders take advantage of that. And offenders flock to an  
1312 atmosphere in which they can either anonymously or not

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1313 anonymously get access to youth, offend against youth, engage  
1314 in sextortion, a growing problem that the FBI had to list \_  
1315 send out a warning on this year, a warning from the FBI about  
1316 how social media platforms are a vehicle for this kind of  
1317 abuse. The DEA had to send out a warning last year about how  
1318 social media platforms are involved in selling drugs to  
1319 youth.

1320           So lots of them are doing this. And the platforms have  
1321 zero incentive to clamp down on this to clean up their  
1322 atmospheres. Why? Because they are monetizing it. And  
1323 there is an excellent case involving Twitter out in, I  
1324 believe, in the Ninth Circuit that talks about they are made  
1325 aware of the CSAM that is on their platform. And not only is  
1326 the company not taking it down, there are links to  
1327 advertisements in these images.

1328           \*Mr. Walberg. Yes, to use it and monetize it, as you  
1329 have said, and make it worse. Thank you.

1330           Dr. Franks, we have seen Section 230 play out in the  
1331 courts on numerous occasions. Recently, as has been  
1332 mentioned, on Gonzalez versus Google the justice declined to  
1333 rule whether targeted recommendations by social media

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1334 companies' algorithms would fall outside the liability of  
1335 Section 230. What does this mean for Congress, and how  
1336 should we proceed?

1337 \*Dr. Franks. I think it means that, to the extent that  
1338 Congress was waiting to see if the Supreme Court would  
1339 clarify the original intent of the statute and maybe sort of  
1340 steer it back to where the path should have been, the Supreme  
1341 Court is now pretty decisively said, "We are not willing to  
1342 do that," or, "We think that Congress is better situated to  
1343 do that." And I think at that point that means that, if the  
1344 feeling is that Section 230 has led us down a very dangerous  
1345 path, Congress has to act now.

1346 \*Mr. Walberg. Almost saying that we must act.

1347 \*Dr. Franks. I believe so.

1348 \*Mr. Walberg. Because they won't do it. So that gives  
1349 us the opportunity.

1350 Thank you very much, I yield back.

1351 \*Mr. Latta. Thank you. The gentleman yields back the  
1352 balance of his time. The chair now recognizes the gentleman  
1353 from California's 29th district for five minutes for  
1354 questions.

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1355           \*Mr. Cardenas. Thank you, Mr. Chairman. I appreciate  
1356 the opportunity for us to come together like this and have  
1357 this very, very important hearing. It is affecting millions  
1358 and millions of Americans every single day, and we hear the  
1359 horror stories of the negative effects of what is happening,  
1360 especially when it comes to little children and communities  
1361 across America.

1362           We are standing at a very unique point in American  
1363 history, where a number of technologies are converging to  
1364 create a digital landscape that could prove to be unfriendly  
1365 to democracy and the public. Advances in generative  
1366 artificial intelligence, as well as the rolling back of  
1367 social media content moderation policies are opening the door  
1368 to a boom in mis and disinformation in our information  
1369 ecosystem.

1370           Americans who are invested in the least by social media  
1371 platforms will invariably bear the brunt of this [sic]. We  
1372 have seen this play out in the past two decades in cycles of  
1373 our elections, where Americans whose primary language is  
1374 Spanish and other languages were exposed to higher levels of  
1375 false information online. That includes inaccurate



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1376 information about access to reproductive health, vaccine  
1377 safety, and election integrity. Rampant mis and  
1378 disinformation serves to weaken democracy and embolden our  
1379 adversaries abroad, as well as radical elements here in our  
1380 own country. It has a real-world effect on public health.

1381         With a major U.S. election looming this fall, we need to  
1382 be paying attention. There needs to be accountability from  
1383 the platforms that we trust to connect Americans with each  
1384 other and the world \_ with the world around them to ensure  
1385 that information is designed to harm them, not allowed to  
1386 spread wildly in the name of driving engagement and record-  
1387 breaking profits [sic]. That accountability also needs to be  
1388 \_ needs to lead to equitable investments in fighting mis and  
1389 disinformation in languages beyond English.

1390         Dr. Franks, in your testimony you talk about how the  
1391 protections the tech industry currently enjoys because of  
1392 Section 230 have resulted in a warped incentive structure  
1393 that can create profit at the expense of tremendous harm to  
1394 people. I have sent multiple letters to online platforms  
1395 with my colleagues highlighting these platforms' lack of  
1396 investment in Spanish language content moderation. And while

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1397 the responses we get are sometimes receptive to the problem,  
1398 we don't see a follow-through of an investment on acting on  
1399 it.

1400 As things currently stand, do social media platforms  
1401 have any incentive to seriously invest in Spanish language  
1402 content moderation outside of a fear of public shaming?

1403 \*Dr. Franks. I would say that, unfortunately, the  
1404 answer is probably not much. Public shaming can do a little  
1405 bit, but we have already seen that in some of the documents  
1406 and the conversations that have been revealed by  
1407 whistleblowers and others, that tech officials often openly  
1408 talk amongst themselves about how, oh, there is a new  
1409 scandal, we are probably going to get called before Congress,  
1410 we are going to be asked some embarrassing questions, and  
1411 then everybody is going to move on, we will go back to making  
1412 money.

1413 So I think, given the way that Section 230 has clearly  
1414 been read and interpreted for these companies as essentially  
1415 guaranteeing them you won't have to face the consequences of  
1416 your actions, you end up with a perfectly rational but  
1417 terrible situation where profit-seeking companies think they

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1418 can expand their enterprises, they can offer all of these  
1419 services without offering any of these protections, as you  
1420 are pointing out.

1421       \*Mr. Cardenas. What would an incentive structure look  
1422 like that would produce a reasonable investment in non-  
1423 English language content moderation on social media  
1424 platforms?

1425       \*Dr. Franks. I think, at a minimum, you would have to  
1426 really restrain the definition and the interpretation of  
1427 (c) (2), right, the provision that is essentially saying you  
1428 are not responsible \_ you, Facebook, or whoever the company  
1429 is, you are not responsible for these issues. That is, as I  
1430 have mentioned before, being used to defend against any  
1431 number of claims that are really far beyond anything  
1432 contemplated by Section 230, I think, in 1996.

1433       And really, what you would need to show is that, if you  
1434 are causing harm by pushing out a product that you have not  
1435 established appropriate safeguards for \_ for instance, it  
1436 should be clear that if you are targeting and making your  
1437 product accessible to people who do not speak English, or  
1438 that you are offering it outside of your company's own chosen

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1439 language, you need to have protections in place and  
1440 linguistic competence in place, and cultural competence in  
1441 place in order to make that a safe product.

1442 But if Section 230 is interpreted as saying you can  
1443 simply throw up your hands and say, "We just offered a great  
1444 service, and maybe we didn't do it very well, and maybe it is  
1445 not that safe, it is not our responsibility," I think that  
1446 particular interpretation of (c)(1) definitely has to be  
1447 restricted.

1448 \*Mr. Cardenas. We don't treat bank robbers like that.  
1449 If somebody drives somebody to a bank robbery, we don't say,  
1450 "Oh, you just drove the car. You didn't run in and rob the  
1451 bank, the others did." You are still held accountable. You  
1452 are involved in that situation. You are an integral part of  
1453 how and what took place. We don't have that for these  
1454 organizations.

1455 And if you will indulge me, I would just like to ask you  
1456 to give us a your written interpretation of what a cyber  
1457 civil rights bill should look like, or some of the elements  
1458 thereof. Thank you very much.

1459 [The information follows:]

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1460

1461 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

1462

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1463           \*Mr. Cardenas. Thank you, Mr. Chairman. I apologize I  
1464 went over my time.

1465           \*Mr. Latta. Thank you very much. The gentleman's time  
1466 has expired, and the chair now recognizes the gentleman from  
1467 Georgia's 1st district for five minutes for questions.

1468           \*Mr. Carter. Thank you, Mr. Chairman, and thank all of  
1469 you for being here. This is something that this committee,  
1470 and particularly this subcommittee, is taking very, very  
1471 seriously.

1472           Look, you know, my daddy used to tell me when you don't  
1473 do something, you are doing something. And if we don't do  
1474 something, we are going to be doing something. So we have  
1475 got to address this, and we recognize that. But we want to  
1476 do it right. You know, I don't want to stifle innovation,  
1477 and I don't want to stop the progress that we have made. The  
1478 Internet is phenomenal. But at the same time, we have got to  
1479 address this, and we have \_ and we want to do it in a  
1480 responsible way.

1481           But it has changed. It has changed since 230 was  
1482 written. We all know that. And it is something that \_ it is  
1483 just, you know, it is kind of a heavy lift, if you will, but

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1484 certainly something that can be done.

1485           Dr. Franks, I will start with you. Algorithms. They  
1486 have evolved over the years and over the last decade, and  
1487 they are used by the social media platforms. But sometimes I  
1488 think they are used as an excuse, as a crutch, if you will.  
1489 It always seems to be that we blame everything on the  
1490 algorithms.

1491           But there was a Gallup poll last \_ this past February  
1492 that said the average teen spends four hours a day on the  
1493 Internet, four hours a day. Unbelievable. And that is why,  
1494 you know, we take this so seriously. And we know that there  
1495 have been studies that have shown that the increase in the  
1496 time spent on the Internet has resulted in increased mental  
1497 health issues.

1498           What is your opinion of algorithms and the algorithmic  
1499 recommendations that the First Amendment \_ do you consider  
1500 the algorithm recommendations \_ that the First Amendment is  
1501 protected speech?

1502           \*Dr. Franks. Thank you. I think that is a fairly  
1503 complicated question, but I will say that the algorithmic \_  
1504 if we are keeping it at the category of algorithmic sorting

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1505 generally, I think that that is a very large category that in  
1506 some cases can be used for good as well as for ill.

1507 So the reason why I am being cautious here about saying  
1508 algorithms are good or bad is, one, that they are \_ they have  
1509 such a vast array of uses and can be deployed in so many ways  
1510 I think we would want to be very narrow, we would want to be  
1511 very focused about the kinds of algorithms that we think are  
1512 malicious.

1513 And I want to note that in that (c)(2) provision, right,  
1514 the Good Samaritan provision of Section 230 that talks about  
1515 restricting access to harmful content, what we don't really  
1516 think about sometimes, but I think is important to think  
1517 about, is that companies are fully capable of using  
1518 algorithms for good in that sense. That is, you could  
1519 imagine the opposite situation of the bad situation we mostly  
1520 hear about, that kind of terrible rabbit hole, that \_

1521 \*Mr. Carter. Right.

1522 \*Dr. Franks. \_ there is a teenager who wants to look  
1523 for diets, and suddenly she is being fed all this information  
1524 about eating disorders. What if we do the opposite, right?  
1525 And some companies have tried to do this, to pick up on what



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1526 a user's vulnerabilities are, and move them away.

1527 \*Mr. Carter. Well, very quickly, let me ask you, should  
1528 the platforms be shielded from liability when they are using  
1529 algorithms?

1530 \*Dr. Franks. If they are using algorithms to restrict  
1531 access to harmful content, which is something that these  
1532 companies could do, I would say that falls squarely within  
1533 (c) (2), and should not categorically be seen as a bad thing  
1534 or something that is not deserving of protections.

1535 \*Mr. Carter. Okay. Ms. Leary, Go Dawgs. I am sorry  
1536 that my colleague, Mrs. Cammack, is not here to hear that,  
1537 but \_ she is a Florida Gator, and then I got a Tennessee  
1538 Volunteer up here. All these people, they just \_ they don't  
1539 get it. But anyway, thank you for being here.

1540 Let me ask you, there are a lot of parents who rely on  
1541 third-party apps to help them protect their children when  
1542 they are using social media. In fact, we have got some  
1543 legislation, some bipartisan legislation in this committee  
1544 that we are working on that deals with that.

1545 But as you know, Section 230 requires the platforms to  
1546 notify users of parental protections that are commercially

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1547 available. That seems to be largely ignored. Why is that,  
1548 and why don't we force them to do that?

1549 \*Ms. Leary. Well, I am hoping you will force them to do  
1550 that. But why is that? Again, what is the incentive? The  
1551 incentive is to take this highly vulnerable group \_ and I  
1552 think they spend a lot more than four hours a day here \_ and  
1553 to get as much content in front of them and keep them on as  
1554 possible. And so to have really solid age verification, to  
1555 really honor their privacy rights, that will cut into profits  
1556 because, again, it is the monetizing.

1557 And I wanted to clarify something I said before. I  
1558 didn't want to suggest there was a link to CSAM on the  
1559 particular accounts. What I am talking about is they want to  
1560 traffic eyes to ads, right? So they \_ and that is what I  
1561 mean when I say they monetize things. The ads for whatever  
1562 are put on things that are popular that they are trafficking  
1563 folks to.

1564 \*Mr. Carter. Of course.

1565 \*Ms. Leary. I just wanted to clarify that.

1566 \*Mr. Carter. That is business. We all understand that.  
1567 Unfortunately, it has negative impact, as well.

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1568 Well, again, I thank all of you for being here. This is  
1569 extremely important. We want to get this right. But we got  
1570 to do something. I feel very strongly about that. And I  
1571 think my colleagues here feel the same way.

1572 So thank you and I yield back.

1573 \*Mr. Latta. Thank you. The gentleman yields back, and  
1574 the chair now recognizes the gentlelady from Texas's 7th  
1575 district for five minutes for questions.

1576 \*Mrs. Fletcher. Thank you so much, Chairman Latta.  
1577 Thanks for holding this hearing. This is a really important  
1578 hearing. It has been very useful and helpful, I think, for  
1579 all of us here. Certainly, I have appreciated the testimony  
1580 of all of the witnesses, and appreciate you taking your time  
1581 and sharing such detailed recommendations and thoughts in  
1582 your written testimony, as well.

1583 I want to follow up on a couple of things that we have  
1584 heard today, or things that were in your testimony. And Dr.  
1585 Franks, I want to start with you. Your testimony \_ I would  
1586 say suggests, but I think your testimony just says that the  
1587 courts have basically just gotten it wrong. And now we have  
1588 got 30 years of the courts getting it wrong consistently.

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1589 And that has become now precedent, and that is what is being  
1590 followed. And so I really appreciate the specificity of your  
1591 recommendations at the conclusion of your written testimony  
1592 about specific changes to the provisions to potentially  
1593 address the existing issues that we see.

1594 I guess it seems to me like part of the issue is that  
1595 the very plain language of Section 230 in the first place the  
1596 courts have gotten wrong. So what do you suggest?

1597 Or can you share with us other things you think we can  
1598 or should do to avoid that problem in whatever we try to  
1599 craft to address the situation now?

1600 \*Dr. Franks. Thank you. And I think the most important  
1601 aspect is to really focus on (c)(1), because that seems to be  
1602 where the problems are coming from, and to largely leave  
1603 (c)(2) where it is.

1604 And I think, in terms of the problems that we have seen  
1605 over and over again from the courts in (c)(1) is I think  
1606 there is two major issues. One is that, even though  
1607 protections under (c)(1) and Section 230 generally are often  
1608 touted as free speech issues, they are often touted as  
1609 protections for free speech that are necessary to foster

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1610 dialogue and encourage public discourse, the terms in (c)(1)  
1611 say "information," and I think companies have really taken  
1612 advantage of that ambiguity to really invoke Section 230 for  
1613 any number of actions.

1614         When you look at the text of (c)(1) it says  
1615 "publisher," "speaker," "information." That should be  
1616 speech. But a lot of these things would not be considered  
1617 speech if they were coming up outside of the online context,  
1618 or at least they would be contested.

1619         So I think clearly what needs to be limited there is  
1620 take out the word "information" and put in "speech," and  
1621 make it clear that, as an initial threshold matter, a company  
1622 cannot invoke Section 230's protections unless we are talking  
1623 about speech, and it is the obligation of the company itself  
1624 to actually show that it is, in fact, speech that they are  
1625 talking about.

1626         And the other is that there needs to be a limitation on  
1627 this kind of immunity if it is going to be given at all under  
1628 (c)(1). It has got to be limited to those kinds of social  
1629 media companies and platforms that are not soliciting,  
1630 encouraging, profiting from, or being deliberately

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1631 indifferent to what they know is harmful content.

1632           \*Mrs. Fletcher. Okay. Thank you for that. I think it  
1633 is very helpful. And again, I appreciated your  
1634 recommendations.

1635           I want to turn now to Professor Leary because I  
1636 appreciate in your testimony and discussion that because of  
1637 Section 230 we really haven't developed the case law as  
1638 envisioned. And so I guess I am wondering, as part of this  
1639 process, what you think that we could try to do, or what you  
1640 suggest we might try to do to fill that gap and address kind  
1641 of the gap in the 30 years of case law as a part of what we  
1642 are doing here.

1643           \*Ms. Leary. I think a key part of the gap is to get rid  
1644 of immunity that says we are not having the lawsuit. You  
1645 can't come in, you can't prove your case. We don't have to  
1646 give discovery over to you, and the public cannot learn and  
1647 get answers to some of these questions that this committee is  
1648 struggling with. It is a defense. And we go into court, and  
1649 sometimes plaintiffs will be able to prove their case and  
1650 sometimes they won't. But that jurisprudence will come up.

1651           And currently we have information about these websites

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1652 almost entirely from either a two-year investigation of  
1653 Backpage from over on the Senate side or from the  
1654 whistleblowers that have come forward, not from litigation.  
1655 And typically we have them from litigation. That is where we  
1656 learn about product design, about what is happening in these  
1657 algorithms, et cetera. So I think that that is a key space  
1658 where we could develop that jurisprudence.

1659 \*Mrs. Fletcher. Okay, thanks. And I have about 40  
1660 seconds left. I also wanted to follow up with Professor  
1661 Stanger.

1662 You just mentioned in your opening that you had some  
1663 thoughts on national security. So do you want to share more  
1664 with the 30 seconds? You piqued my interest, and I have got  
1665 about 30 seconds for you to share your thoughts on that, some  
1666 of them.

1667 \*Dr. Stanger. Sure. Just in summary, I think some of  
1668 our enemies are very much interested in subverting our  
1669 infrastructure and also influencing public opinion in the  
1670 United States by working through and exploiting Section 230  
1671 and limited content moderation. So that is something that I  
1672 think we need to stop.

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1673           \*Mrs. Fletcher. Okay. Perfect timing, Mr. Chairman, I  
1674 yield back.

1675           Thank you all so much.

1676           \*Mr. Latta. Thank you. The gentlelady yields back, and  
1677 the chair now recognizes the gentleman from Florida's 2nd  
1678 district for five minutes for questions.

1679           \*Mr. Dunn. Thank you very much, Mr. Chairman. I  
1680 believe all my colleagues here in the committee agree we want  
1681 the Internet to remain a free and open place.

1682           But since 1996, it has been operating \_ Section 230 has  
1683 been operating under a light touch regulatory framework,  
1684 allowing online companies and providers to moderate their  
1685 content heavily under an immunity shield. And I think many  
1686 of us have seen some problems with that regulatory framework.

1687           The American public gets very little insight into the  
1688 decision-making process when content is moderated, and they  
1689 have little recourse when they are censored or restricted.  
1690 Recently Americans experienced a high level of online  
1691 policing from Big Tech during the last election. And, you  
1692 know, people saw a lot of things, stories being taken down  
1693 immediately from Twitter and Facebook and whatnot.



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1694           And it is Congress's job to make sure that Big Tech  
1695 companies are not obstructing the flow of information to  
1696 benefit a political agenda, and to ensure a free and  
1697 competitive news market. It is our job to promote  
1698 transparency and truth.

1699           As a member of the Select Committee on China and the  
1700 Speaker's AI Task Force, I have major concerns about the  
1701 risks of our \_ to our Internet ecosystem from the Chinese  
1702 Communist Party and other adversarial nations. Our younger  
1703 generation, in addition, has never been more susceptible to  
1704 foreign propaganda.

1705           Dr. Stanger, you stated in your testimony that liberal  
1706 democracy depends on public deliberation to make citizens  
1707 feel connected to a common enterprise that they feel they had  
1708 a hand in shaping. But the techno-authoritarianism that we  
1709 see on display in China especially sacrifices individual  
1710 rights on the altar of Communist Party ideology. How can we  
1711 ensure potential 230 reforms will safeguard Americans from  
1712 that kind of nefarious online action?

1713           I mean, would amending the law to exclude companies with  
1714 direct or indirect ties to the CCP, is that a start?

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1715           \*Dr. Stanger. I think if you were to repeal Section  
1716 230(c)(1) and hold companies liable, you could get at a lot  
1717 of these problems quite directly.

1718           One point I think that is really important to read into  
1719 the record that might be a surprise to some of you is that  
1720 there are two versions of TikTok. There is the version for  
1721 the United States and there is the version for China. And  
1722 the version for China optimizes for things like well-being,  
1723 test scores. It limits the number of hours on the platform.  
1724 We all know that the American version is something else  
1725 entirely if you spend any time on it. It is super addictive,  
1726 and it is definitely not raising test scores or optimizing  
1727 for well-being. I think that speaks volumes about the  
1728 differences in values between China and the United States in  
1729 this issue area.

1730           \*Mr. Dunn. I loved your comment on national security,  
1731 as well. That was very good.

1732           \*Dr. Stanger. Thank you.

1733           \*Mr. Dunn. Dr. Franks, I was recently at a conference  
1734 with major players in the generative AI space we were talking  
1735 to. And I \_ by the way, your testimony was very helpful, I

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1736 thought, explaining the 230 in the way that it was working.

1737         So some of these speakers, however, are very hesitant to  
1738 discuss what data their algorithms or large language models  
1739 are actually trained on, but they were very clear that they  
1740 didn't want to be held liable for the output of those same  
1741 algorithms. Do you think clarifying Section 230 so \_ a  
1742 generalized \_ so we get more to the AI outputs, would we \_  
1743 can we incentivize those platforms to invest in higher  
1744 quality training or data?

1745         That was to Dr. Franks.

1746         \*Dr. Franks. Okay, thank you. Sorry, we were a little  
1747 confused about that.

1748         But yes, I think that one thing that should be made  
1749 clear \_ and I do want to emphasize that I think a  
1750 commonsensical reading of Section 230 would suggest that  
1751 generative AI would not get protections, right, because there  
1752 is that distinction made in Section 230 between being a  
1753 provider of these services versus being an information  
1754 content provider. And a single entity can have both of those  
1755 functions at different times.

1756         If you are taking in inputs and you are giving something

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1757 over, a new thing that didn't exist before, some speech that  
1758 was not there before, an image that didn't exist before, it  
1759 is quite clear that that is your own product. And therefore,  
1760 the intermediary liability \_ immunity from liability simply  
1761 shouldn't apply.

1762 That being said, many of us have been pointing out that  
1763 for 20 years it should have been obvious that this  
1764 interpretation and that interpretation and this particular  
1765 defense by a particular company shouldn't have made sense  
1766 under Section 230, and yet courts did it anyway.

1767 \*Mr. Dunn. I like the way you pointed it out, actually  
1768 in your testimony, that we have turned this law on its head  
1769 with common law, and now we need to, I think, get back in  
1770 with statutory law. And so I thank you.

1771 I think, by the way, all three members of the panel, I  
1772 think that you have really helped us with clarification of  
1773 230, and I do see our responsibility to follow some of these  
1774 guidelines.

1775 Thank you very much, Mr. Chairman, I yield back.

1776 \*Mr. Latta. Thank you. The gentleman's time has  
1777 expired, and he yields back. And the chair now recognizes

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1778 the gentlelady from Illinois's 2nd district for five minutes  
1779 for questions.

1780 \*Ms. Kelly. Thank you, Mr. Chair, and thank you for  
1781 holding this very important hearing.

1782 And as you have heard from my colleagues, this is  
1783 something that Democrats and Republicans agree on, that it is  
1784 time to reevaluate Section 230 of the Communications Decency  
1785 Act.

1786 Dr. Stanger, as a chair of the Congressional Black  
1787 Caucus Health Braintrust, I was particularly drawn to the  
1788 section of your testimony where you discussed Section 230's  
1789 negative effects on human well-being. May you please explain  
1790 how Section 230's blanket immunity from liability for social  
1791 media platforms can contribute to an increase in extremism  
1792 and hate in society at large?

1793 \*Dr. Stanger. Yes, thank you for that question. I  
1794 think we have gone over some very obvious harms, but I think  
1795 much of it ties back to the immunity from liability, but also  
1796 the ad-driven business model, which means that the algorithms  
1797 optimize for engagement, the amount of the time on the  
1798 platform. And what we have learned is that human beings are

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1799 most engaged when they are outraged. And so this really  
1800 produces a kind of race to the bottom of the brain stem sort  
1801 of dynamic, rather than kind of the robust public square we  
1802 would like to see.

1803 I think the problem in a nutshell is we have yet to  
1804 acknowledge that we have a national virtual public square as  
1805 stands, and it is a free-for-all. It is not encouraging the  
1806 kind of well-reasoned, respectful argument, the agreement to  
1807 disagree, all of these things that make America great. And I  
1808 think reforms of Section 230 would help us get that back.

1809 \*Ms. Kelly. Thank you. Closely related to extremism  
1810 and hate, I think there should be grave concerns \_

1811 \*Dr. Stanger. Absolutely.

1812 \*Ms. Kelly. \_ about the influx of disinformation on  
1813 social media platforms, and especially when it has adverse  
1814 effects on some of the most vulnerable members of our  
1815 society.

1816 Dr. Franks, your written testimony states that Section  
1817 230 was intended to enable and incentivize online  
1818 intermediaries to engage in modernization and other content  
1819 management practices to protect users from harmful content.

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1820 However, my concern is that Section 230 (c) (1) is an  
1821 incentive for social media platforms not to act, even when  
1822 they know their platforms are spreading harmful content.

1823 So how can we best ensure that social media and other  
1824 Internet platforms that choose not to moderate or remove  
1825 harmful content are ineligible for the immunity protections  
1826 provided by Section 230?

1827 \*Dr. Franks. I think what we do have to do at this  
1828 point is think about how (c) (1) is providing that kind of  
1829 immunity, which, as I have attempted to illustrate, really  
1830 does undercut the whole idea of (c) (2), right? If there is  
1831 going to be a benefit for engaging in voluntary good  
1832 behavior, but you are going to get the same benefit if you do  
1833 nothing and even if you do terrible things, then obviously  
1834 that is inconsistent.

1835 So there has to be a clarification made about (c) (1)  
1836 that says you cannot interpret it in a way that will make it  
1837 undermine the goals of (c) (2). And at a minimum, that means  
1838 you cannot be profiting from harmful content. And I think it  
1839 also means you cannot be an indifferent bystander.

1840 \*Ms. Kelly. Thank you so much.

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1841           And Professor Leary, Georgia State University?

1842           \*Ms. Leary. University of Georgia.

1843           \*Ms. Kelly. Oh, because my daughter graduated from \_

1844           \*Ms. Leary. Hence the dog reference, which I wouldn't  
1845 have understood up until this semester.

1846           \*Ms. Kelly. I was going to say my daughter graduated  
1847 from GSU.

1848           Across America, hundreds of state AGs, school districts,  
1849 families, and parents of children who have been hurt \_ or  
1850 worse, killed \_ as a result of dangerous and addictive social  
1851 media platforms have filed cases seeking accountability for  
1852 poorly-designed social media products.

1853           Do you agree that all of America's children and young  
1854 people deserve a safe, non-addictive social media product?

1855           And how would reforming Section 230 help in this effort?  
1856 I know you agree, but \_

1857           \*Ms. Leary. Yes. I was going to say that is an easy  
1858 question. Yes.

1859           And I would note just a couple of days ago some tribal  
1860 nations joined in these lawsuits that we are seeing with over  
1861 40 attorneys general on some of these platforms, making some



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1862 of the very arguments that you are pointing to. So I do  
1863 agree. And again, I think the reform involves (c)(1), as has  
1864 been said.

1865 And talking about knowing or should have known or  
1866 deliberate indifference, you know, we might be able to have  
1867 disagreements about the level of mens rea, but right now  
1868 there is no mens rea. Right? And the way that we hold  
1869 people accountable is we say there is a standard of care that  
1870 you should have either designing your product, making it not  
1871 addictive, et cetera, and/or \_ and whatever other feature,  
1872 and you needed to abide by that.

1873 The problem is we have no idea what is going on behind  
1874 all of these things, because all of these suits have not been  
1875 able to go forward.

1876 \*Ms. Kelly. Thank you, and I am out of town \_ time.  
1877 I yield back.

1878 \*Mr. Curtis. [Presiding] The gentlewoman yields. The  
1879 chair now recognizes myself. I am John Curtis from Utah, and  
1880 I am really pleased to be with you today.

1881 Dr. Franks, I am going to start with a comment you made,  
1882 but I would like all of you to respond to this, and let me

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1883 try to explain my thought process. In your opening remarks  
1884 you went down kind of into the weeds of Section 230 and  
1885 talked about a situation that, in my mind, I envision a \_  
1886 what I would call a community bulletin board, and where, with  
1887 some exceptions that we have all agreed, I could come up and  
1888 post something on that bulletin board and anybody could walk  
1889 along and see that posting that I made. And in my opinion,  
1890 that is what happened many years ago, as these social medias  
1891 were coming up. I could get online and I could see my friend  
1892 from high school if I wanted to. I could go seek that out  
1893 and I could find my friend from high school.

1894 I was surprised one day when I logged on and I no longer  
1895 saw my friend from high school, but I was served information.  
1896 In other words, somebody had gone to that bulletin board and  
1897 moved the information around and changed what I would see.

1898 If you follow a continuum from those early days of  
1899 social media to more and more algorithm interaction along  
1900 that continuum, all the way over to ChatGPT and AI, where I  
1901 think we have discussed in this hearing Section 230 wouldn't  
1902 apply, the one thing that I am \_ not really think that we  
1903 have talked about so much today is, is there a real trigger

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1904 point, the point at which these companies stop being a  
1905 bulletin board and start changing the algorithms to dish up  
1906 what I see?

1907 Dr. Stanger, you mentioned that it \_ we are motivated if  
1908 we are angry, right, so I stay on longer. And I am just  
1909 wondering if a definition of when Section 230 applies and  
1910 doesn't apply is more tied to these algorithms. And when  
1911 companies move away from simply a community bulletin board to  
1912 where they are now deciding what John Curtis sees and how  
1913 long I see it, does that make sense? And I would love you  
1914 all to comment on that.

1915 Dr. Franks?

1916 \*Dr. Franks. So my hesitation about the algorithm, the  
1917 sorting, this kind of question is that that category, I  
1918 think, does encompass a lot of different things that a social  
1919 media platform could do, or a search engine, for that matter.  
1920 And some of those things are actually quite beneficial, I  
1921 think, on the one hand.

1922 And on the other, I do think (c)(2)'s clear immunity  
1923 provision that says, if you are doing something to restrict  
1924 access to harmful content you should be getting this

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1925 protection, I think some of those algorithmic sorting  
1926 functions can be used in that way \_ not nearly as often as  
1927 they should be, because there is no real incentive for these  
1928 companies to use them \_

1929 \*Mr. Curtis. So \_ and I will give you both a chance to  
1930 comment, but I kind of want to jump on and noodle this for  
1931 just a minute.

1932 So I am not sure if this is what you are saying, but in  
1933 essence, sometimes when they make decisions they show us good  
1934 things. And sometimes when they make decisions they show us  
1935 bad things. And I guess my question is \_

1936 \*Dr. Franks. More to the point that they can also  
1937 direct people away from bad things. That is to say, if you  
1938 are trying to figure out an algorithmic system that actually  
1939 identifies that instead of looking for information on eating  
1940 disorders because you are a researcher, you may be a  
1941 vulnerable 14-year-old girl, maybe directing you away from  
1942 that.

1943 \*Mr. Curtis. And my only concern for that is then  
1944 somebody is making a decision about when that is good or bad.  
1945 And so \_ but I do appreciate your opinion.

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1946 Professor?

1947 \*Ms. Leary. I am hearkening back to the point of  
1948 Justice Thomas, right, in his statement in denial of certain  
1949 \_ in Malwarebytes, where he reminds us the reason why there  
1950 was a distinction in liability for publishers versus others  
1951 is the publisher, again, would know that information, and  
1952 maybe a bulletin board wouldn't, right? A distributor  
1953 wouldn't.

1954 What you are describing sounds a lot more like a  
1955 situation where there is knowledge about the person seeking  
1956 the information, there is knowledge about the information  
1957 available somewhere in that toxic mix, there is a financial  
1958 incentive to get certain information in front of that  
1959 individual and not. And in my mind, that sounds a lot more  
1960 like a situation of a publisher than it does just a  
1961 distributor.

1962 \*Mr. Curtis. Correct.

1963 \*Ms. Leary. Now, I don't disagree with Dr. Franks's  
1964 point. I am just sort of highlighting, I think, what you are  
1965 getting at, Congressman, which is how things looked in 1996  
1966 and who was what is very different today.

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1967           \*Mr. Curtis. Yes, and I will just \_ well, I want to  
1968 give Dr. Stanger time, as well, so please.

1969           \*Dr. Stanger. Yes. No, I love the way you framed that,  
1970 because it really captures the move from the original  
1971 internet to Web 2, the social media Internet. The first  
1972 world, you have got that bulletin board. You are speaking  
1973 out, your voice is heard. Everybody is equal. Second one,  
1974 you have got an algorithm that is intervening in between your  
1975 voice and what people actually see. And that is something  
1976 else entirely.

1977           It is important, I think, to realize that Section 230  
1978 currently covers recommender algorithms, content moderation,  
1979 and search. They are all immune, and that is a very sweeping  
1980 mandate.

1981           \*Mr. Curtis. Sadly, I am out of time. Thank you all  
1982 for your comments and for being here today.

1983           I yield, and the chair recognizes Mrs. Dingell from  
1984 Michigan.

1985           \*Mrs. Dingell. Thank you, Mr. Chairman. I appreciate  
1986 this hearing being held to today to discuss the harms many of  
1987 us see on the Internet these days. And thank you to all of

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1988 the witnesses for testifying.

1989 In today's digital age online events directly impact our  
1990 lives. Whether it is cyber bullying, mental health issues,  
1991 explicit threats, or the dissemination of false information,  
1992 online content can result in tangible harm and it is  
1993 resulting in tangible harm.

1994 Our recent bipartisan concerns in this committee over  
1995 TikTok underscore this reality. We should be focusing on the  
1996 direct human impact and imminent threats posed by such  
1997 content to our communities. We shouldn't have to accept the  
1998 hate, the misinformation, or violent language circulating  
1999 online as it inevitably infiltrates our communities, often  
2000 with severe consequences.

2001 As we are all aware, courts have interpreted Section 230  
2002 of the Communications Decency Act to give tech companies  
2003 broad immunity, allowing them to evade accountability for  
2004 what occurs on their platforms. Section 230 deserves  
2005 scrutiny as the Internet has changed dramatically since this  
2006 was passed 25 years ago.

2007 However, we have also heard and know that some forms of  
2008 content moderation can result in censorship of free speech.

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2009 We have to strike a careful balance, preserving free  
2010 expression while ensuring companies and platforms effectively  
2011 shield users, especially our vulnerable populations like our  
2012 children, from harmful or explicit online content, and we  
2013 must hold them accountable when they fall short.

2014 Dr. Stanger, social media companies have an incentive to  
2015 prioritize controversial content to drive user engagement  
2016 and, therefore, ad dollars. I am interested in why these  
2017 would \_ why they would fail to act when they know their  
2018 platforms are harming people, especially kids, by allowing  
2019 them to find and then pushing them to information on suicide,  
2020 eating disorders, and the like. Why does Section 230 act as  
2021 a disincentive for these companies to take down the kind of  
2022 information that we have proof is harming people?

2023 \*Dr. Stanger. The simple answer is that they are immune  
2024 from liability, and so it is very easy to appear to respond  
2025 when Congress is shining a spotlight on that activity. You  
2026 will see \_ I haven't done this, but you can track the number  
2027 of trust and safety and employees at companies. They shoot  
2028 up after a big incident. But then, when the attention moves  
2029 elsewhere, they cut the trust and safety employees.



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2030           So the simple answer to the question is there is just so  
2031 much money to be made. And it is also a massive undertaking.  
2032 These are enormous companies. Meta, I think the statistic is  
2033 \_ it is in my testimony \_ that they have \_

2034           \*Mrs. Dingell. Cut it there. I am going to keep asking  
2035 questions. So thank you for that.

2036           \*Dr. Stanger. Oh, sure, sorry.

2037           \*Mrs. Dingell. Because I have only got a few minutes.

2038           Dr. Franks, could you expand on how the application of  
2039 Section 230 allows these companies to make design decisions  
2040 that they know result in tangible harm, including vulnerable  
2041 populations?

2042           \*Dr. Franks. Well due to this expansive version of  
2043 (c) (1), or the interpretation, instead of being limited to  
2044 things like defamation and speech that are clearly  
2045 countenanced by (c) (1), companies have been able to make the  
2046 claims that essentially everything they do, every choice they  
2047 make, even about their own platforms, counts as that content  
2048 that is covered under (c) (1). That shouldn't be the case,  
2049 because it doesn't seem to be supported by the text or  
2050 history, but it has been successful in the courts.

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2051           \*Mrs. Dingell. Thank you.

2052           Professor Graw Leary, does Section 230 effectively  
2053 shields social media companies from accountability for the  
2054 negative consequences stemming from the content on their  
2055 platforms?

2056           \*Ms. Leary. It absolutely does for the reasons that we  
2057 have stated: in their design, in their failure to respond  
2058 when they are put on notice, and their failure to be  
2059 transparent as to how they do things. All of that, they are  
2060 shielded from that. They have absolute profit motive and  
2061 zero accountability.

2062           \*Mrs. Dingell. Thank you.

2063           Dr. Franks, what reforms do you think would realign the  
2064 incentives for these companies to act responsibly?

2065           \*Dr. Franks. I think, at a minimum, focusing again on  
2066 (c)(1), because that is driving most of the problems here, to  
2067 ensure two things. One is that we very much make sure that  
2068 it is only limited to speech so we are not going to be able  
2069 to countenance arguments, for instance, that this is going to  
2070 cover things that would not be considered to be speech in any  
2071 other context. And secondly, that the immunity would not be

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2072 available to any platform that has knowledge or should have  
2073 knowledge of harmful content on its platforms and is doing  
2074 nothing to stop it, even when it easily could, and certainly  
2075 not if it is profiting from it or exploiting it or soliciting  
2076 it.

2077           \*Mrs. Dingell. Thank you.

2078           Mr. Chairman, I am out of time so I am going to be  
2079 submitting more questions for the record.

2080           [The information follows:]

2081

2082           \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2083

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2084 \*Mrs. Dingell. And I yield back.

2085 \*Mr. Curtis. The gentlewoman yields, the chair calls on  
2086 the gentleman from Pennsylvania, Mr. Joyce.

2087 \*Mr. Joyce. Thank you, Mr. Chairman, for holding this  
2088 hearing today on Section 230, and thank you to our witnesses  
2089 for appearing.

2090 As a doctor, I am acutely aware of how important today's  
2091 hearing is, particularly concerning children's mental health.  
2092 For years harmful content online has been linked not only to  
2093 lonelier children but to adults. Bullying, explicit  
2094 materials, and violent content has been allowed to stay up on  
2095 platforms for users to see, regardless of age.

2096 We owe our children a safer experience online. While  
2097 the Communications Decency Act attempted to do so by  
2098 incentivizing good-faith behavior by platforms, unfortunately  
2099 this has not been put into action. Instead, harmful content  
2100 still persists on platforms, and it is our congressional duty  
2101 to focus on necessary and balanced reforms.

2102 Professor Leary, in your testimony you mentioned the  
2103 original intent of Section 230 of the CDA was to \_ I am  
2104 quoting \_ "protect children and families from explicit

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2105 content.'" Do you believe that Section 230 is standing up to  
2106 its original intent to protect our children?

2107 \*Ms. Leary. No, and I don't be \_ I am not being flip.  
2108 I think the numbers of CSAM that are outlined in my written  
2109 testimony in more detail than what I said orally demonstrate  
2110 categorically, quantifiably, absolutely no. The reports to  
2111 the CyberTipline about what our children are experiencing and  
2112 exploitation and exposure to CSAM and other obscene material,  
2113 as well as being put into these images, makes it very clear  
2114 that that is amplified by a lack of liability for these  
2115 companies under Section 230.

2116 \*Mr. Joyce. So let me allow you to clarify that. You  
2117 first said yes, but my question was is Section 230 standing  
2118 up to its original intent, and your answer to is it standing  
2119 up to its intent \_

2120 \*Ms. Leary. I thought I said no, but I could be wrong.

2121 \*Mr. Joyce. Thank you.

2122 \*Ms. Leary. So thank you.

2123 \*Mr. Joyce. I think your explanation was no, and I  
2124 agree with that.

2125 What consequences, Professor Leary, do you foresee for

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2126 children if Big Tech continues to allow harmful content to be  
2127 pushed onto our kids?

2128       \*Ms. Leary. Well, the research \_ I believe I cite to  
2129 what I think is a very comprehensive study of the effects of  
2130 this from the Canadian authorities about the effects of  
2131 survivors of CSAM, and it is really lifelong. To quote Dr.  
2132 Franks's discussion of victims of so-called revenge  
2133 pornography or non-consensual pornography, they are lifelong  
2134 in every aspect: psychological, physical, emotional, et  
2135 cetera.

2136       And I would again direct you to the testimony of the  
2137 vice president from [inaudible] a couple of weeks ago,  
2138 talking about AI. There is a whole new dimension now of how  
2139 children are being harmed by the use of generative AI and  
2140 creating more CSAM from innocuous pictures of youth or youth  
2141 who have been in CSAM. And now there is another version of  
2142 it coming out, so another dimension of what is already  
2143 lifelong effects from this unique, pernicious victimization.

2144       \*Mr. Joyce. Dr. Leary, in cases such as Doe versus  
2145 Twitter out of the Ninth Circuit, Section 230 was interpreted  
2146 to shield platforms, even when they are in knowing possession

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2147 and distribution of child sexual abuse material. Do you  
2148 think the Ninth Circuit got it wrong, or does Circuit [sic]  
2149 230 need to be amended to prevent similar court decisions?

2150 \*Ms. Leary. I think both of those are true. I think  
2151 that there are cases where there is precise and exact  
2152 knowledge of the specific source of the claim in the  
2153 litigation, and the companies have still gotten immunity. I  
2154 think that is wrong, textually.

2155 And I think, as we have demonstrated, there are so many  
2156 courts that have gotten this wrong because throughout the  
2157 country tech companies have been advocating this litigation  
2158 position that Congress needs to act.

2159 One trend we are seeing is it is not just in dissents  
2160 that courts are saying I really think we need to revisit 230.  
2161 We are seeing it in concurrences, where courts \_ where  
2162 individual judges are saying this is wrong, but I feel now  
2163 compelled by all of our precedent to rule this way, but I  
2164 want to acknowledge I think this is wrong. So we are seeing  
2165 this voice come up in a slightly different way, which I think  
2166 speaks to how courts are feeling their hands are tied.

2167 \*Mr. Joyce. So in my remaining few minutes here, do

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2168 each of our witnesses feel that Congress needs to act to  
2169 create and reform this law to protect our kids?

2170 This is a simple yes or no.

2171 \*Ms. Leary. I am happy to start and say, yes, Congress  
2172 needs to act.

2173 \*Dr. Stanger. I would say yes, and my reform would be  
2174 repeal of (c) (1).

2175 \*Dr. Franks. I would say yes, and not only children,  
2176 but everyone.

2177 \*Mr. Joyce. I thank each of our witnesses for appearing  
2178 here today.

2179 And Mr. Chairman, I yield.

2180 \*Mr. Latta. The gentleman yields, and the chair  
2181 recognizes the gentlewoman, Ms. Clarke from New York.

2182 \*Ms. Clarke. Thank you very much, Mr. Chairman. I  
2183 thank our ranking member for holding this important hearing.

2184

2185 And let me also thank our expert panel of witnesses for  
2186 joining us today to examine one of the key laws underpinning  
2187 a collective shift towards an increasingly online society.

2188 While I am appreciative of the opportunity to speak on



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2189 these important issues, I am experiencing a bit of deja vu  
2190 or, if you will, a Groundhog's Day phenomenon. This  
2191 committee has worked for years now to better understand the  
2192 limitations of the current regulatory infrastructure and  
2193 combat the spread of harmful content on social media. And we  
2194 have watched for years as social media platforms have shifted  
2195 from chronological ranking to more targeted user experience  
2196 reliant on algorithmic amplification, a process that remains  
2197 opaque to users and policymakers alike.

2198 As I said in this hearing \_ in a hearing this very  
2199 committee held over three years ago, the time is now to act,  
2200 or the time is \_ to act is now. This use of algorithmic  
2201 amplification, now coupled with the rise in artificial  
2202 intelligence, has far too often resulted in discriminatory  
2203 outcomes, the promotion of harmful content, and now  
2204 generative AI, unprecedented threats to our democracy and  
2205 electoral processes.

2206 Unfortunately, regardless of whether these outcomes were  
2207 intended or not, many in Big Tech have chosen to pursue  
2208 business models that prioritize profits over people, and are  
2209 using laws intended to keep folks safe online to shield

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2210 themselves from liability. That is why I have introduced the  
2211 Civil Rights Modernization Act in the past, and will do so  
2212 again in the coming days.

2213         If passed, the Civil Rights Modernization Act would  
2214 ensure that Americans' civil rights are protected online by  
2215 making it clear that Section 230 does not exempt social media  
2216 platforms from adhering to civil rights laws, particularly in  
2217 the case of targeted advertising. With so much of our  
2218 society from education to health care to economic opportunity  
2219 shifting to the digital realm, we must take greater care to  
2220 ensure that technological innovation does not serve to unwind  
2221 over a century of hard-earned civil rights, especially for  
2222 communities of color.

2223         Having said that, my question for any or all of our  
2224 witnesses today is about the interplay between Section 230  
2225 and artificial intelligence. Do you believe that the  
2226 proliferation of AI tools such as LLMs and chat bots have  
2227 exacerbated the shortcomings of Section 230? And if so, how,  
2228 and how can we best combat this?

2229         So Dr. Franks, do you want to start?

2230         \*Dr. Franks. I would be happy to, thank you. And thank

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2231 you for those comments about civil rights, because I think  
2232 this is exactly the message that does need to be reinforced  
2233 about the ability of this interpretation of Section 230 to  
2234 roll back really important progress that has been made, and  
2235 how dangerous that is, especially for marginalized  
2236 communities.

2237         And I do think the answer to your question is yes. What  
2238 these \_ proliferation of these technologies have done has  
2239 democratized the use of really terrible tools and practices  
2240 that used to be expensive, hard to operate, and has now made  
2241 it possible for anyone to do this and to spread this kind of  
2242 harmful information on these platforms in ways that were  
2243 simply not possible a decade or so ago.

2244         So I think that this needs to be made clear that, even  
2245 though \_ I think, as many of us have reinforced on this panel  
2246 \_ that Section 230's terms should not apply to generative AI,  
2247 it seems clear that we cannot rest on the assumption that  
2248 that will mean that this will not happen in the courts. And  
2249 therefore, I do think one of the explicit targets for reform  
2250 for Section 230 needs to be to spell this out, to say that  
2251 for generative AI they do not get the protections of this

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2252 immunity.

2253 \*Ms. Leary. I would agree, and I would just highlight a  
2254 very concrete example to your question, Congressman Clarke,  
2255 which is mentioned in my testimony.

2256 There was a study out of Stanford that pointed out that  
2257 actual CSAM has been found in the collection of the large  
2258 language models for one of the generative AI. I don't have  
2259 the technical terms. It has worked its way in there, right?  
2260 And once it is in, it is very hard to get out. So there is a  
2261 concrete example of what you raise.

2262 \*Dr. Stanger. Yes, I thank you, too, for drawing our  
2263 attention to this important issue of civil rights.

2264 I think failure to act on Section 230 will allow for  
2265 automated disinformation, misinformation, harassment at \_ in  
2266 a turbocharged way with generative AI.

2267 And I think another thing Congress needs to think about  
2268 in the generative AI age is the vast inequalities that some  
2269 of these technologies are producing. One example, I had to  
2270 put in my syllabus this year that students could use the free  
2271 version of ChatGPT, but it was a violation of the honor code  
2272 to use the subscription version. Why? Because this is

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2273 access to knowledge, and I do not want my students having  
2274 unequal access to knowledge.

2275 \*Ms. Clarke. I yield.

2276 \*Mr. Curtis. The \_

2277 \*Ms. Clarke. Thank you very much. I yield back.

2278 \*Mr. Curtis. The gentleman yields, and the chair  
2279 recognizes the gentleman from Georgia, Mr. Allen.

2280 \*Mr. Allen. Thank you, Mr. Chairman, for \_ and I am  
2281 glad we are convening this hearing, and I want to thank our  
2282 witnesses for being here today. It has been very  
2283 informative.

2284 Big Tech currently has the \_ and we have said this over  
2285 and over \_ the unilateral control over much of public debate  
2286 today, and it is concerning a lot of Americans. And the tech  
2287 landscape has evolved dramatically since 1996. And I am glad  
2288 we are, like I said, holding this hearing today, and I thank  
2289 you for giving us the opportunity to learn more about the  
2290 potential reforms needed in Section 230.

2291 Dr. Franks, you noted in your written testimony that The  
2292 New York Times and Fox News have no special sweeping immunity  
2293 from liability the way the tech industry does. Newspaper and

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2294 television industries have not collapsed under the weight of  
2295 potential liability, nor can it plausibly be argued that the  
2296 potential for liability has constrained them to publishing  
2297 and broadcasting only anodyne, non-controversial speech.

2298 My question is, do you think that a provision designed  
2299 to incentivize screening and blocking offensive materials  
2300 should extend to shielding Internet companies from liability  
2301 for harms arising from algorithmic recommendations and  
2302 amplification of content?

2303 \*Dr. Franks. I want to reinforce again that the idea  
2304 that algorithmic amplification sorting, this is a very large  
2305 category. And therefore, I would be hesitant to say that  
2306 there is something about that specifically that is something  
2307 that you would \_ that would lead to, categorically, a  
2308 situation where there should be no immunity under Section  
2309 230.

2310 Precisely because (c)(2) makes so clear that any attempt  
2311 to restrict access to harmful content is something that  
2312 should be rewarded with that immunity, those systems, the  
2313 algorithmic sorting systems that are so often used for bad  
2314 purposes, can also be used for very good purposes if only

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2315 there were an incentive for companies to use them this way,  
2316 to actually divert people away from some of that harmful  
2317 content.

2318       \*Mr. Allen. A key cause of today's Internet toxic  
2319 environment is that digital platforms are shielded from  
2320 liability in a world where click bait attracts greater  
2321 attention and advertising revenue, and absence of liability  
2322 creates a perverse incentive for platforms to surface,  
2323 disseminate, and amplify low-quality, outrageous, addictive,  
2324 harmful, and illegal content.

2325       Dr. Stranger, you stated in your written text testimony  
2326 that, while Section 230 perpetuates an illusion that today's  
2327 social media companies are common carriers like the phone  
2328 companies, they are not. Unlike Ma Bell, they curate the  
2329 content they transmit \_ that they transmit to users. You also  
2330 noted that Section 230 has also created fictitious platforms  
2331 that are, in reality, publishers since they curate the  
2332 content via recommended algorithms and content moderation.

2333       Traditional media is held liable for publishing  
2334 defamation and untruths, while Big Tech companies are  
2335 accountable only to their shareholders. Dr. Stranger, what

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2336 do you think Congress should do to right the imbalance that  
2337 currently exists?

2338 \*Dr. Stanger. Thank you very much for that question.

2339 I think it is really important to realize the way our  
2340 media ecosystem has changed as a result of Section 230.

2341 Traditional media is dying. You are seeing it reduced to a  
2342 few big newspapers, and then there are all kinds of special  
2343 bulletins that you can subscribe to for money to get your  
2344 news in a particular issue area.

2345 Now, an institution like The New York Times or the Wall  
2346 Street Journal, they are meticulous about going over their  
2347 sources to be sure that they are not publishing something  
2348 libelous, because that could be ruinous. So in a sense, they  
2349 are clearing material, then social media posts it. But guess  
2350 who profits from it? Guess who gets the ads? The social  
2351 media companies. And this seems to me to be a problem, for  
2352 traditional media to be liable for what they publish but the  
2353 social media companies are not.

2354 The way to deal with this is to abolish section (c)(1).

2355 I would make one other point about recommender  
2356 algorithms. They really are intervening in ways we can't



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2357 understand. I would like it very much if I got to choose my  
2358 own algorithm.

2359 \*Mr. Allen. Right.

2360 \*Dr. Stanger. And that is something you could think  
2361 about, as well.

2362 \*Mr. Allen. Well, and they are addictive.

2363 \*Dr. Stanger. Yes.

2364 \*Mr. Allen. I mean, people \_ you know, certain people  
2365 have addictive behavior, and then all of a sudden they are  
2366 addicted, and they can't do without this stuff.

2367 \*Dr. Stanger. Yes.

2368 \*Mr. Allen. A question for the entire panel. Well, I  
2369 am out of time, but maybe you can answer this after the  
2370 hearing or in writing: Should generative artificial  
2371 intelligence receive Section 230 liability protections?

2372 And if you would, just give us an answer to that after  
2373 the hearing, since I am out of time.

2374 [The information follows:]

2375

2376 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2377

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2378 \*Mr. Allen. And I yield back, Mr. Chairman.

2379 \*Mr. Latta. Thank you. The gentleman's time has  
2380 expired, and the chair will recognize the gentlelady from New  
2381 Hampshire's 2nd district.

2382 But before she begins her line of questions, I just want  
2383 to say that we are sorry to hear of your retiring from the  
2384 House and from this committee. We are going to miss you. So  
2385 \_

2386 \*Ms. Kuster. Thank you.

2387 \*Mr. Latta. \_ all the best in the future, and you are  
2388 recognized for five minutes for questions.

2389 \*Ms. Kuster. Thank you, and I am very grateful for your  
2390 call. I apologize I was in Italy and didn't get to return  
2391 it. But thank you for your kind words.

2392 Well, I want to thank our chair, Chair Latta, and our  
2393 Ranking Member Matsui for holding this very, very important  
2394 hearing. I was actually at a conference on artificial  
2395 intelligence, so I am very interested in this topic.

2396 I want to begin by asking for unanimous consent to  
2397 insert a New York Times story from April 8, 2024, titled,  
2398 "Teen Girls Confront an Epidemic of Deep Fake Nudes in

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2399 Schools, '' and I would like to submit for the record.

2400 \*Mr. Latta. Without objection.

2401

2402

2403 [The information follows:]

2404

2405 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2406

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2407           \*Ms. Kuster. I want to \_ the article outlines a heinous  
2408 problem confronting our children: AI-generated child sexual  
2409 abuse material, or CSAM.

2410           Professor Graw Leary, my first question is to you. I  
2411 believe that Section 230 was not intended and does not  
2412 provide civil immunity for content created by generative AI,  
2413 including child sexual abuse materials. And do you agree  
2414 with this perspective?

2415           \*Ms. Leary. I do agree with this perspective for all  
2416 the reasons that we have said. However, the concern is that  
2417 the courts, notwithstanding the plain language of the  
2418 statute, will rule otherwise.

2419           \*Ms. Kuster. Thank you so much. And do you think it is  
2420 likely that a court \_ well, you are saying the courts have  
2421 reached the opposite conclusion. And how harmful do you  
2422 think that is for young people in this country?

2423           \*Ms. Leary. Well, as I said, I think what you have  
2424 referenced in the article is a new dimension about \_ a new  
2425 dimension of harm. Just when you think that people could  
2426 only be digitally harmed in so many ways, we come up with new  
2427 ways, or at least Big Tech facilitates them. And this is

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2428 another one.

2429           So there is two dimensions to this harm that I think we  
2430 are observing. One are the children who are already in CSAM,  
2431 and now these images, thanks to generative AI, are being  
2432 manipulated. So there is a whole other form of victimization  
2433 that is out there compounding what they have already had to  
2434 live with \_ is out there as a reminder of their physical  
2435 abuse.

2436           Secondly, there is then these children who have not been  
2437 the victim of physical sexual assault, but these images are  
2438 then out there creating the effect, as well. And the Supreme  
2439 Court recognized all the way back to Ferber in these kinds of  
2440 images the harm is the \_ a harm, not the harm \_ is the images  
2441 themselves. And this is a unique kind of victimization,  
2442 uniquely pernicious because it is in perpetuity. And so now  
2443 it is in perpetuity, and it is fictional, and it looks just  
2444 like it actually happened.

2445           \*Ms. Kuster. Horrifying. I can't even imagine.

2446           As Professor Franks so aptly notes in her testimony, I  
2447 want to stress that while Section 230 was intended to protect  
2448 Good Samaritans who make responsible content moderation

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2449 decisions, it has actually turned out to become the Bad  
2450 Samaritan law that rewards Internet platforms that ignore  
2451 harmful content.

2452 As Congress, it is critical we learn from our past, and  
2453 we know that when all parties are absolved from being held  
2454 responsible for their conduct bad actors run amuck. As we  
2455 recognize Sexual Assault Awareness Month this April, let us  
2456 take a hard look at Section 230 and evaluate what Congress  
2457 can do to hold bad actors accountable and to protect and  
2458 support survivors.

2459 Dr. Franks, your testimony recommends updating Section  
2460 230 by adding a deliberate indifference standard, which will  
2461 empower people to hold bad actors accountable when they  
2462 overlook harmful content on their platform. Can you explain  
2463 how this change could empower survivors of sexual assault or  
2464 harassment to hold intentionally negligible platforms  
2465 accountable?

2466 \*Dr. Franks. Thank you, and thank you for highlighting  
2467 both the question of image-based sexual abuse that we have  
2468 seen with deepfake artificial nudes, as well as the issue of  
2469 sexual assault. My organization, the Cyber Civil Rights

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2470 Initiative, focuses extensively on both of those issues, and  
2471 I appreciate the highlighting of the stakes of this here.

2472 The reason for the suggestion of the deliberate  
2473 indifference standard is precisely to highlight or to  
2474 undercut this defense that we often hear from companies and  
2475 social media platforms who say that they are not responsible  
2476 for exploitation, for instance, on their platforms because  
2477 they did not themselves do the initial act.

2478 And the deliberate indifference standard, I think, would  
2479 allow us to consider whether or not \_ whether they were the  
2480 cause directly of this particular act. Have they seen it?  
2481 Are they aware of it? Were they continually, over time,  
2482 indifferent to it when they could have helped?

2483 And that standard, I think, if we want to think about  
2484 situations such as the Taylor Swift deep fake news that hit  
2485 the platform X just a short time ago for something like 27  
2486 million views before they were able to sort of get a handle  
2487 on it, I think a situation like that would be to say that  
2488 someone in that position could actually hold X potentially  
2489 accountable for the fact that they did nothing and allowed  
2490 that kind of imagery to be seen 27 million times before

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2491 taking action.

2492 \*Ms. Kuster. Yes, I think that makes a great deal of  
2493 sense, and we would love to follow up with you.

2494 My time is up, but I will submit for the record another  
2495 question on the specific exemptions of the 230 liability  
2496 shield, and whether we should add victims of child sexual  
2497 abuse and harassment.

2498 [The information follows:]

2499

2500 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2501



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2502           \*Ms. Kuster. Thank you. I am incredibly grateful for  
2503 your work. I am grateful for this hearing.

2504           And I yield back.

2505           \*Mr. Latta. Thank you. The gentlelady yields back, and  
2506 the chair now recognizes the gentleman from Texas's 11th  
2507 district for five minutes for questions.

2508           \*Mr. Pfluger. Thank you, Mr. Chair. I thank the  
2509 witnesses.

2510           Over a year ago we held a roundtable to discuss Big Tech  
2511 and the fentanyl poisoning crisis. We had a mother, Amy  
2512 Neville, who lost her son, her 14-year-old-son to poisoning.

2513           I am also in Homeland Security. We have had a lot of  
2514 hearings in the Homeland Security about the illicit sale of  
2515 drugs, the issue coming across the border. We have talked to  
2516 DEA. We know that criminal drug networks are using the  
2517 Internet and using platforms to further the sale. So this  
2518 Congress I have introduced the Drug Free Social Media and  
2519 Digital Communities Act that would increase penalties for  
2520 individuals who are selling those drugs, but I will start  
2521 with Dr. Franks and Professor Leary, then have a separate  
2522 question for you, Dr. Stanger.

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2523           What role, you know, should \_ how would you reform  
2524 Section 230 to combat the illicit sale of drugs?

2525           And I will start with you, Dr. Franks.

2526           \*Dr. Franks. I would say first that I do want to  
2527 recognize how serious those harms are, and that the  
2528 suggestion that has been made, I think, in previous reform  
2529 attempts has been to think about what are some of the most  
2530 serious harms we worry about, and maybe we will have carve-  
2531 outs within Section 230 to address them. So we have seen  
2532 that approach in the past.

2533           And I would suggest that the better approach would be to  
2534 think about why those particular kinds of harms are being  
2535 facilitated on certain platforms, and try to address that  
2536 directly without trying to think of carve-outs for what are  
2537 obviously very serious kinds of injuries.

2538           And I think that that is the case partly because I think  
2539 we want the statute to be somewhat readable, and it is  
2540 getting to the point where it is less readable, certainly,  
2541 than it was. We want it to be understandable by platforms  
2542 and by users. And I think we really do want to be as  
2543 targeted as possible in trying to identify what is the

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2544 underlying problem with the incentive structure for these  
2545 platforms, as opposed to going case by case and harm by harm.

2546 \*Mr. Pfluger. Okay, Professor Leary?

2547 \*Ms. Leary. I would echo those comments about the  
2548 carve-out piece.

2549 And I think, on that same vein, what the \_ for three  
2550 times now our nation's attorneys generals have asked, please,  
2551 just insert "state criminal laws can be enforced in this,"  
2552 as well, and don't tie our hands anymore. I think that would  
2553 be a way, as we talked about before, where you would get  
2554 multiple enforcement of criminal laws both on the state and  
2555 Federal level.

2556 And again, the private rights of action that exist with  
2557 some statutes, both of \_ narcotics, crime in general, we want  
2558 multiple pressure points, right, to disincentivize people  
2559 from engaged or facilitating criminal activity.

2560 \*Mr. Pfluger. Thank you very much. I will move to the  
2561 national security bucket, if you will.

2562 I mean, we are going through this right now with FISA  
2563 reform. It is the line between safety and security and  
2564 liberty and overreach. It is, you know, where is the role of

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2565 government? Where is that line so you preserve liberty?

2566 We have talked about a couple of cases: Taamneh,  
2567 Gonzalez. And in your testimony something stood out. You  
2568 said getting rid of the liability shield for all countries  
2569 operating in the United States would have largely  
2570 unacknowledged positive implications for national security.  
2571 We have talked about some of the recent legislation that  
2572 affected companies that are located in countries that are  
2573 malign actors or non-friendly in some ways.

2574 Can you expand on how the \_ can you expand on this, and  
2575 how foreign adversaries have utilized Section 230 to hide  
2576 behind it and maybe manipulate to their advantage national  
2577 security issues?

2578 \*Dr. Stanger. Yes, that is a great, great question. I  
2579 think it is important to realize that the core of this  
2580 problem is the ad-driven business model, which is explaining  
2581 a lot of the behavior. You can make money by ignoring the  
2582 harms, and our enemies exploit that by, you know, building  
2583 troll farms that flood social media with things that divide  
2584 us.

2585 This is a deliberate Russian influence strategy that is

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2586 used on social media. It has been used in the past  
2587 elections. I am sure there are many other examples, but I  
2588 have heard some people talk about China as being involved in  
2589 a reverse opium war with the United States, with the fentanyl  
2590 and with \_

2591 \*Mr. Pfluger. Do you believe that is true?

2592 \*Dr. Stanger. I don't have enough information to know  
2593 if that is true. But, you know, I have heard it explained to  
2594 me as being said that they feel justified in it because it  
2595 was done to them.

2596 \*Mr. Pfluger. Do you believe that it is possible and in  
2597 this upcoming election that foreign adversaries, countries  
2598 would manipulate data or anything to have an outcome, an  
2599 electoral outcome that they benefit from or like?

2600 \*Dr. Stanger. Yes, absolutely. They are going to be  
2601 geared up to divide us and instigate chaos because they  
2602 thrive on chaos. Terrorists thrive on chaos. And you can  
2603 really whip up this country and divide us through social  
2604 media.

2605 \*Mr. Pfluger. Should Section 230 be reformed to push  
2606 back against that?

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2607           And my time is \_

2608           \*Dr. Stanger. I think you remove section \_ if you  
2609 remove (c)(1) and the immunity shield, companies will behave  
2610 very differently.

2611           \*Mr. Pfluger. Thank you.

2612           My time has expired, I yield back.

2613           \*Dr. Stanger. Thank you.

2614           \*Mr. Latta. Thank you, the gentleman yields back and  
2615 the chair now recognizes the gentleman from Texas's 33rd  
2616 district for 5 minutes for questions.

2617           \*Mr. Veasey. Thank you, Mr. Chairman. This is a  
2618 interesting conversation that we are having today.

2619           And I think around Section 230 \_ I can think about  
2620 locally in Dallas, you know, we have Mark Cuban, who made his  
2621 fortune in the tech industry with Broadcast.com, which later  
2622 became Yahoo! And Mark talks a lot about how, because it was  
2623 largely an unregulated atmosphere, that companies like him,  
2624 nascent companies, were able to make money, and that it would  
2625 have been hard for start-up, nascent companies like his to be  
2626 able to get to where he ultimately got, had it been for reams  
2627 of regulations.

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2628           At the same time, I think that all of us are concerned  
2629 about a lot of the social media that is out there, the rise  
2630 of a lot of the hateful content and misinformation that is  
2631 out there. And when you think about the overall overarching  
2632 subjects that the Energy and Commerce Committee deals with,  
2633 which is a lot of different topics outside of the  
2634 subcommittee, one of the issues that we talk about is the  
2635 dangers of the environment and climate change. But I can  
2636 tell you that when you throw Section 230 and you mix it with  
2637 what we are seeing with AI, I think that AI may kill all of  
2638 us before climate change will if we don't do something about  
2639 everything that is happening in this particular space.

2640           And so I want to try to figure out a way how we can  
2641 continue to have a thriving, you know, tech industry, where  
2642 people and startups can make money, but at the same time deal  
2643 with some of these very serious issues. And so I wanted to  
2644 ask.

2645           I know that there was a 2016 case, Force versus  
2646 Facebook, and it was involving the states of four U.S.  
2647 citizens that argued that Facebook knowingly hosted accounts  
2648 belonging to a terrorist organization. But the Second Court

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2649 of Appeals ruled that Facebook was shielded by 230. And I  
2650 wanted Ms. Leary to talk, as you outlined in your testimony,  
2651 this decision gave platforms like Meta de facto near-absolute  
2652 immunity for claims creating algorithms that facilitate and  
2653 spread terrorism.

2654 Can you discuss how reconsidering and reforming the  
2655 scope of Section 230 will help rid harmful content across  
2656 social media platforms without impacting Section 230 (c)(2),  
2657 which protects platforms from civil liability when they in  
2658 fact decide to remove objectionable content?

2659 \*Ms. Leary. Sure. Well, obviously, as we have said,  
2660 this deals with (c)(1) right? And the idea that somehow  
2661 facilitating illegal content, coordinating and connecting  
2662 terrorists with \_ and coordinating fellow terrorists is  
2663 somehow publishing really does defy logic. So (c)(1) needs  
2664 to be eliminated or amended.

2665 I think, as well, looking at the idea of when one  
2666 facilitates illegal conduct \_ and there is lots of different  
2667 ways we can phrase this, and you have seen a number of  
2668 suggestions \_ but this is facilitating illegal conduct, which  
2669 most businesses face liability for. And why this industry



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2670 doesn't make any sense at all.

2671           \*Mr. Veasey. Yes. In the same vein, can you elaborate  
2672 on how Congress can clarify Section 230 to hold social media  
2673 platforms accountable for harms they cause through their own  
2674 actions, whether using an algorithm or not, and how we can  
2675 ensure that Big Tech companies are not \_ continue to be \_ to  
2676 have immunity for causing harm, and how we can deter the use  
2677 of dangerous algorithms and targeted ads?

2678           \*Ms. Leary. Sure. I think the answer is really pretty  
2679 much the same. Whether it is their actions directly or  
2680 deliberate indifference, to use Dr. Franks's language, it is  
2681 all the same. They are allowing it to take place and they  
2682 have got immunity to do it.

2683           So addressing (c)(1), I think, will address that and  
2684 will hold them to the same standards that every single  
2685 business in America is held to.

2686           \*Mr. Veasey. Yes.

2687           \*Ms. Leary. When their direct actions cause harm, they  
2688 face litigation and the jurisprudence develops. And then  
2689 when, they are making decisions should we do X or Y, they can  
2690 look at the jurisprudence and the guardrails that exist and

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2691 make informed decisions.

2692 \*Mr. Veasey. Yes, and Dr. Franks, in closing, I want to  
2693 ask you. How should we reform Section 230 to account for the  
2694 law's current over-interpretation of activity that is  
2695 objectionable?

2696 And what would be the impact of limiting liability protection  
2697 to speech as opposed to information?

2698 \*Dr. Franks. To reinforce the comments that were just  
2699 made, limiting clearly within (c) (1) to say that this is not  
2700 going to provide immunity for platforms, intermediaries that  
2701 are soliciting, encouraging, profiting from, or being  
2702 deliberately indifferent to harmful content, I think, that is  
2703 the limitation. Something along those lines is needed for  
2704 (c) (1).

2705 I do also think, in terms of restricting the scope of  
2706 things, that you can raise a Section 230 kind of defense,  
2707 too. It is important to identify that this should not be  
2708 simply information very broadly conceived, because that can  
2709 cover anything from the Snapchat filter that calculates your  
2710 speed that may have led to the deaths of a couple of young  
2711 men. The argument that that should be considered as

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2712 something within the purview of (c)(1), I think, is because  
2713 of that language about information that should be replaced  
2714 with the more restrictive term of speech.

2715 \*Mr. Veasey. Yes.

2716 Thank you, Mr. Chairman.

2717 \*Mr. Latta. I thank \_ the gentleman's time has expired,  
2718 and the chair now recognizes the gentlelady from Tennessee's  
2719 1st district for five minutes for questions.

2720 \*Mrs. Harshbarger. Thank you, Mr. Chairman. Excuse my  
2721 voice. It is allergy season.

2722 Dr. Franks, words can be very powerful in legislation,  
2723 and the meaning behind them. And in your testimony, one of  
2724 your recommendations \_ and I will follow up on what Mr.  
2725 Veasey was saying \_ one of your recommendations for reform is  
2726 to change the word "information" and replace it with the  
2727 word "speech." Can you elaborate on that and tell us  
2728 exactly why that needs to be changed?

2729 \*Dr. Franks. Yes, thank you. Because I think what we  
2730 are seeing, in addition to a lot of speech claims that are  
2731 quite tenuous, we are also seeing this defense being used and  
2732 invoked for things that I think most people, had they heard

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2733 about these cases offline, would not have thought that this  
2734 is a plausible claim for speech or anything that originally  
2735 Section 230 was intended to protect.

2736         So when we talk about the benefits of an expansive  
2737 interpretation of that kind of protection in (c)(1), usually  
2738 the justification is something like we need to foster public  
2739 discourse, we want to ensure that people can speak freely.  
2740 But then we see that defense being used in defense of  
2741 facilitating illegal arms sales, for instance, or drug sales,  
2742 or credit card processes, or features of a particular  
2743 platform that are things like choosing not to do background  
2744 checks on a dating site, right?

2745         And the idea that those things should plausibly fall  
2746 within (c)(1), I think, really could be limited or could be  
2747 sort of cut off if you specified that the only kinds of  
2748 claims that you can bring the defense for are claims that  
2749 involve speech.

2750         \*Mrs. Harshbarger. Okay. Thank you ,ma'am. This is  
2751 for Professor Leary or Dr. Stanger.

2752         Without Section 230, we wouldn't be able to have  
2753 websites like Reddit or Yelp, as they would be open to

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2754 lawsuits for the opinions of users. But sometimes these  
2755 companies hide behind Section 230 to amplify certain voices  
2756 over others. And I guess my question to you is, what is the  
2757 appropriate balance?

2758 How much reform is appropriate to ensure that the  
2759 Internet as we know it continues to operate?

2760 \*Ms. Leary. I would like to make a historical point,  
2761 and I am really actually going to direct the committee to  
2762 some scholarship that is a little \_ that is from 2017. But I  
2763 think it is \_ really makes a really helpful point. And that  
2764 is Danielle Citron and Benjamin Wittes's article, which is  
2765 referenced in my written statement, about the Internet won't  
2766 break.

2767 \*Mrs. Harshbarger. Yes.

2768 \*Ms. Leary. And one of the things it talks about is  
2769 this historical arc of, yes, when things began, and they were  
2770 nascent, and there is not a lot of regulation, and that may  
2771 be okay. But as they grow, and we deal with the situation  
2772 where one company, a small company, can cause lots of harm,  
2773 that is where we see regulation. And whether we are talking  
2774 about the environment, motor vehicles, food, we \_ fill in the

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2775 blank, that is the natural arc of things. Why in this  
2776 industry we are all of a sudden resisting that natural arc,  
2777 even though the amplification of the harms are so great, is  
2778 beyond me.

2779 So in terms of that balance, I think history has given  
2780 us a very good sense of that balance, and we are clearly past  
2781 the time where there should be some more of a balance to  
2782 benefitting what is no longer a nascent Internet.

2783 One quick point. I just happened to notice this morning  
2784 when you look at the richest individuals in the world, there  
2785 is a lot from the tech industry.

2786 \*Mrs. Harshbarger. Yes.

2787 \*Ms. Leary. And then, just earlier this week, the  
2788 National Coalition on Sexual Exploitation released its Dirty  
2789 Dozen list, and there is a vast amount of technology  
2790 companies. And that just struck me as an interesting reality  
2791 in the world in which we are living. And Section 230 may be  
2792 playing a part in that.

2793 \*Mrs. Harshbarger. Yes, got you.

2794 Dr. Sanger?

2795 \*Dr. Stanger. I would really like to echo what

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2796 Professor Leary has said. And it is really true that  
2797 eliminating (c)(1) or reforming Section 230 is not going to  
2798 break the Internet as we know it. If anything, I think we  
2799 are moving beyond the Web 2 ecosystem of social media to  
2800 something that is new and different.

2801 And I would just point out how antitrust suits against  
2802 companies like Microsoft or IBM resulted in very different  
2803 outcomes. In one, you know, IBM never quite recovers. In  
2804 another, Microsoft is booming with its connection to ChatGPT.  
2805 So these companies aren't going to break if you regulate  
2806 them.

2807 \*Mrs. Harshbarger. They are resilient. They will pop  
2808 back or they will find a way to get around.

2809 \*Dr. Stanger. Yes.

2810 \*Mrs. Harshbarger. This is for anyone. Assume a Yelp  
2811 user posts something allegedly untrue about a business, and  
2812 the business makes a legitimate case to Yelp that the post  
2813 should be removed. If Yelp reviews the post and the facts,  
2814 and then makes a determination about whether to remove the  
2815 post, are they a publisher?

2816 \*Ms. Leary. Well, I will jump in to say I am not sure

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2817 if they are a publisher or not for all the reasons that we  
2818 have said, but I will say that is where mens rea comes into  
2819 play. If somebody had a good or bad dinner at a restaurant,  
2820 I don't think a platform knows or should know if that is true  
2821 or false, right?

2822 \*Mrs. Harshbarger. Yes.

2823 \*Ms. Leary. That is not what we are dealing with, and  
2824 that is not what our concerns are. So I think that that  
2825 would solve sort of that problem if there is a mens rea idea,  
2826 so that \_

2827 \*Mrs. Harshbarger. Okay.

2828 \*Ms. Leary. I don't know if that is helpful.

2829 \*Dr. Stanger. I love the Reddit example there, because  
2830 they are \_ the users themselves are upvoting or downvoting  
2831 entries, and that is determining what the community voice is,  
2832 and I think that is really a window on the future. These  
2833 large social media companies are a thing of the past, or they  
2834 will be eventually.

2835 \*Mrs. Harshbarger. Yes, exactly. Okay, I guess my time  
2836 is expired. I had one more question and I won't get to  
2837 answer it, but \_ ask it. But I will submit it. Thank you.



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2838 [The information follows:]

2839

2840 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

2841

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2842           \*Mr. Latta. Thank you. The gentlelady's time has  
2843 expired, and the chair now recognizes the gentleman from  
2844 California's 23rd district for five minutes for questions.

2845           \*Mr. Obernolte. Thank you, Mr. Chairman, and thank you  
2846 for being here on a topic that is very personally important  
2847 to me.

2848           And I will apologize in advance and ask your indulgence,  
2849 because I am going to take a little bit of a contrarian  
2850 stance here and say that I think Section 230 was hugely  
2851 important for the growth of the Internet. And I am not  
2852 saying that it is perfect, and I am not saying that it  
2853 doesn't need to be reformed, I think it does. But I  
2854 certainly don't think it needs to be repealed.

2855           And I want to talk a little bit about that, because I  
2856 don't think we would have been able to see the adoption of  
2857 the Internet in the form it is now without Section 230. If,  
2858 you know, in the early days of the Internet \_ and I have run  
2859 a technology company for 30 years, so I have some experience  
2860 with the business side of it \_ I don't think it would have  
2861 been possible to expect the \_ a purveyor of the early  
2862 bulletin board systems to moderate all the content that was

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2863 created there.

2864           And I think that if plaintiffs were empowered to be able  
2865 to sue anyone that said \_ any platform that hosted content  
2866 that was defamatory against them, for example, I don't think  
2867 anyone would have had platforms that hosted that kind of  
2868 content at all, anywhere, and I don't think we would be in  
2869 the place that we are today. So I want to ask some questions  
2870 about that, because I think it is important to recognize the  
2871 balance.

2872           And Professor Leary, I want to start with you, and you  
2873 made a point that I thought was very interesting when you  
2874 said that Section 230 effectively denies some parties the  
2875 opportunity to litigate issues, which it does and an  
2876 undeniably does. But said a different way, it sounds like  
2877 you are saying the world would be a better place if we just  
2878 sued each other more often. And I know I am being a little  
2879 bit uncharitable about that, but, I mean, that is kind of  
2880 what I hear.

2881           And I think it is also important to recognize the other  
2882 side of that equation, which is there are large transactional  
2883 costs in achieving the kind of equity that righteous lawsuits

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2884 do, right? You have to pay the lawyers. You have to pay  
2885 judges, you have to have courtrooms. You have to deal with  
2886 the fact that there are malicious law firms out there with  
2887 profit incentives that really aren't focused on equity, and  
2888 all of these things impose societal costs.

2889         So, for example, cars cost more undeniably because of  
2890 lawsuits, righteous and non-righteous, because it is  
2891 impossible to make a perfect car, and because cars operate in  
2892 a high-risk environment, right? So we have these societal  
2893 costs that we have to bear that we all bear as a result of  
2894 this, and it is \_ our job is to strike a balance here.

2895         So you specifically talked about the kinds of things  
2896 that proliferate as a result of Section 230. Child  
2897 exploitation, I think you mentioned; you mentioned fentanyl  
2898 sales to minors. All of these things are terrible things.  
2899 But, I mean, it is important to note that these problems  
2900 weren't created by the platforms.

2901         I mean, you make the point that increased moderation  
2902 could prevent them, which is true. How do you navigate that  
2903 issue? Because, you know, I think it is an important point  
2904 to make. If a platform is actively participating in the sale

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2905 of fentanyl to a minor, you have other avenues other than  
2906 those shielded by 230 to go after them legally, don't you?

2907 \*Ms. Leary. Well, if I could begin with the first  
2908 question, and then maybe wrap \_

2909 \*Mr. Obernolte. Sure, well, it is a lot to unpack,  
2910 sure.

2911 \*Ms. Leary. I think your analogy to the car is a really  
2912 great one, that if you \_ cars are more expensive. And if I  
2913 want to design a new car, I have to think about what are my  
2914 potential liabilities, what are the rules \_ no pun intended \_  
2915 the rules of the road, sort of what are the regulatory or  
2916 outlines in the law of what is reasonable?

2917 There is a mens rea. And I think if I intentionally, or  
2918 with deliberate indifference, or I know that there is a bad  
2919 part to the car but I install it anyways, I should be held  
2920 liable. And I think the same is true for the Internet. And  
2921 why \_

2922 \*Mr. Obernolte. But, I mean, if I could stop you  
2923 there \_

2924 \*Ms. Leary. Sure.

2925 \*Mr. Obernolte. It is also true that, even if I was

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2926 completely righteous as a car company, and I said I am going  
2927 to do everything that I can to make the safest car that I  
2928 can, it is impossible to make a car where I am never going to  
2929 get sued, right?

2930       \*Ms. Leary. I think that is right. But our law has  
2931 never said that you have absolute immunity because it is  
2932 impossible. What our law has said is we will hold you  
2933 responsible for your business if you know or should have  
2934 known there was a problem. Even if you didn't cause it, you  
2935 got a part from another company that you knew was faulty or  
2936 thought could have been faulty but you installed it anyways,  
2937 because if it doesn't work it is not like you will be held  
2938 liable.

2939       \*Mr. Obernolte. Sure, but \_

2940       \*Ms. Leary. I think we have never \_

2941       \*Mr. Obernolte. The case with these companies is  
2942 different, right? Because they didn't intend \_ I mean, there  
2943 was no negligence like \_ you know, like we knew that you were  
2944 going to sell fentanyl to a minor, but we allowed you to do  
2945 it anyway because we wanted to make money.

2946       \*Ms. Leary. Well, and I agree with you, Congressman.

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2947 And I guess the point that I am trying to make is we need to  
2948 discuss that in court. And after the jurisprudence is  
2949 devolved, where we know what is an appropriate mens rea for a  
2950 platform and what is not, those companies will all have  
2951 guidance for what is the standard of care in place to make  
2952 sure this doesn't happen, which is sufficient, but not a  
2953 guarantee of a perfect world. And I think that is what we  
2954 don't have now because it has never been allowed to develop.

2955 \*Mr. Obernolte. Right. Well, we are going to continue  
2956 this discussion. I am already out of time. And I touched,  
2957 like, a little bit of the iceberg that I wanted to expose  
2958 here. But I want to thank you very much for your willingness  
2959 to engage on this issue. I think it is going to be a  
2960 productive discussion.

2961 I will yield back, Mr. Chairman.

2962 \*Mr. Latta. Thank you very much. The gentleman yields  
2963 back, and the chair now recognizes the gentleman from Idaho's  
2964 1st district for five minutes for questioning.

2965 \*Mr. Fulcher. Thank you, Mr. Chairman.

2966 To those on the panel, thank you for \_ it has been a  
2967 long hearing, and I appreciate your input and feedback. This

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2968 is very valuable to us. I have a question for each of you.  
2969 I would like to start with one \_ the same one, actually \_ to  
2970 Professor Leary and to Dr. Franks.

2971 And we know that if you yell fire in a crowded theater  
2972 the First Amendment doesn't apply. And so with that example  
2973 set up, if you will, I would like to match that up with the  
2974 context of an AI algorithm that foments violence, and we have  
2975 had discussion about how that works. Where is the limit, the  
2976 realistic limit to Section 230's immunity protection when it  
2977 comes to that AI algorithm?

2978 And I will start with Professor Leary to get your  
2979 feedback on that, and then I would like to get that same  
2980 feedback from Dr. Franks, please.

2981 \*Ms. Leary. Forgive me if I am not following the  
2982 question, but the link to the yelling fire and the \_

2983 \*Mr. Fulcher. Yes, so what is the limit? What is a  
2984 realistic limit do you think should be for Section 230's  
2985 immunity protection when it comes to that AI algorithm that  
2986 is generating \_

2987 \*Ms. Leary. Sure. I think, as we have said, I think a  
2988 read of the plain language of the statute, where it wouldn't



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2989 apply if it led to the AI algorithm, assuming it is  
2990 generative AI has created content, so it shouldn't apply.

2991 And I think that we have to be cautious about courts and  
2992 how they interpret things, because for 30 years they have  
2993 interpreted it \_ I think we would all agree \_ interpreted  
2994 Section 230 different from what Congress intended.

2995 So in my mind, those are the two essential problems with  
2996 the question that you pose.

2997 \*Mr. Fulcher. Okay, thank you.

2998 Dr. Franks?

2999 \*Dr. Franks. If we can make a distinction, as I think  
3000 you are suggesting, between sometimes there are aspects of a  
3001 platform's own sort of conduct \_ that is that they are  
3002 sorting things, they are recommending things \_ that is one  
3003 kind of question, I think, versus whether or not they are  
3004 producing their own content. And I think the generative AI  
3005 example is a lot easier in the sense that we would simply  
3006 have the same standard that we would have for anyone else,  
3007 right? If you were producing a certain type of content, you  
3008 don't get Section 230 immunity because you are not an  
3009 intermediary, you are simply one of the speakers.

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3010           \*Mr. Fulcher. Okay.

3011           \*Dr. Franks. As to the question of when you are sorting  
3012 or recommending somebody else's speech, I do understand the  
3013 temptation to want to articulate that there is something  
3014 about that in particular that maybe should be distinguished  
3015 in the Section 230 context. I would just suggest that I  
3016 think it is more compelling to look at the responsibility and  
3017 the contribution, regardless of which form it takes, whether  
3018 it is algorithms or anything else.

3019           If at the end of the day the question is did this  
3020 platform have some sort of knowledge about this harmful  
3021 content, did it do nothing to stop it, did it encourage it,  
3022 did it solicit it, did it profit from it, and make those the  
3023 key questions.

3024           \*Mr. Fulcher. Fair enough. Good input. Thank you.  
3025 That actually is a reasonable segue to the \_ what I wanted to  
3026 talk to Dr. Stanger about.

3027           Thank you for your feedback, also. You have made it  
3028 clear your position on (c)(1), section (c)(1). I get that,  
3029 and that makes sense. But on a related note, just speak to \_  
3030 elaborate a little bit more. Policing by social media

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3031 companies. What is the proper role there? Or is there a  
3032 proper role? Liability? Liability, I assume that is going  
3033 to be connected to your previous statements on the (c)(1)  
3034 removal.

3035 But could you just expand a little bit more on those  
3036 things? When it comes to these massive social media  
3037 companies, what should we be \_ what should be the benchmarks  
3038 in terms of policing and liability?

3039 \*Dr. Stanger. I just want to maybe take you back to the  
3040 first part of your question to explain that, which I thought  
3041 was a good one, which is that we have a long history of First  
3042 Amendment jurisprudence in this country that, in effect, has  
3043 been stopped by Section 230.

3044 In other words, if you review \_ if you remove (c)(1),  
3045 that First Amendment jurisprudence will develop to determine  
3046 when it is crying fire in a crowded theater, whether there is  
3047 defamation, whether there is libel.

3048 You know, we believe in free speech in this country, but  
3049 even the First Amendment has some limits put on it, and those  
3050 could apply to the platforms. We have a strange situation  
3051 right now, if we take that issue of fentanyl that we were

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3052 discussing earlier. What we have right now is essentially a  
3053 system where we can go after the users, we can go after the  
3054 dealers, but we can't go after the mules. And I think that  
3055 is very problematic. We should hold the mules liable. They  
3056 are part of the system.

3057 \*Mr. Fulcher. Okay, all right. Thank you.

3058 Mr. Chairman, I too have further questions, but I will  
3059 put those on the record in writing.

3060 [The information follows:]

3061

3062 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3063

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3064 \*Mr. Fulcher. And I yield back.

3065 \*Mr. Latta. Thank you. The gentleman yields back. And  
3066 seeing no further members wishing to ask questions, I want to  
3067 thank \_

3068 \*Mr. Cardenas. I said going once, going twice.

3069 [Laughter.]

3070 \*Mr. Latta. Seeing no further members asking questions  
3071 to our witnesses today, I want to thank you all for your  
3072 being with us today. It is very insightful. I know when I  
3073 reviewed all your testimonies, I found it very, very  
3074 interesting. It did take me back a few years when I was  
3075 studying torts, when I saw that the Prosser was being cited.  
3076 But I really appreciate you all being here today.

3077 I ask unanimous consent to insert in the record the  
3078 documents included on the staff hearing document list.

3079 Without objection, this will be the order, and without  
3080 objection so ordered.

3081 [The information follows:]

3082

3083 \*\*\*\*\*COMMITTEE INSERT\*\*\*\*\*

3084

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3085           \*Mr. Latta. I remind members they have 10 business days  
3086 to submit questions for the record, and I ask the witnesses  
3087 to respond to the questions promptly. Members should submit  
3088 their questions by the close of business on Thursday, April  
3089 25.

3090           And without objection, the subcommittee is adjourned.

3091           [Whereupon, at 3:42 p.m., the subcommittee was  
3092 adjourned.]