

Prepared Testimony and Statement for the Record of

**Allison Stanger
Russell Leng '60 Professor of International Politics and Economics
Middlebury College**

**At the
Hearing on “Where Are We Now? Section 230 of the Communications Decency Act of
1996”**

**Before the
House Committee on Energy and Commerce
April 11, 2024**

Introduction

Section 230 has both facilitated the internet as we know it and has produced a social media ecosystem that has had deleterious effects on both democracy and mental health. The self-reinforcing ramifications of a mere twenty-six words (“no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider”) mean that there is potential for positive gains with a multiplier effect from Section 230’s repeal.

Currently, Democrats and Republicans disagree over what problem they are trying to solve. For Republicans, it is the content moderation of large social media companies infringing on freedom of speech and first amendment rights. For Democrats, it is the misinformation and disinformation that pollutes the virtual public square. Both parties have a point. The current system’s liability shield, practically speaking, allows companies to do as they please, despite their own terms of service, preempting first amendment protections in some instances. At the same time, since the ad-driven business model optimizes for engagement (time spent on the platform), misinformation and lies proliferate, feeding the belief that truth itself is relative. This further polarizes an already seriously fractured civil sphere.

While reforming Section 230 might have made sense prior to the advent of Generative AI, which will automate all these damages, it no longer does so. If we want innovation on large language models to continue AND our democracy to be sustainable, it is worth asking, “What would a world without Section 230 look like?” That question is best answered by first understanding the circumstances that brought Section 230 into being and its subsequent interpretation by the Courts (see [Hearing memo](#)).

Section 230 was designed to unleash and protect internet innovation, thereby maintaining America’s competitive edge in cyberspace. It succeeded, and today, American tech companies dominate the world’s social media. Present at the creation of 230, my co-author Jaron Lanier once remarked to former Vice President Al Gore, advocate of the “information superhighway,”

that we were giving a gift to the network effect winners.¹ This was prescient, and that gift was exchanged for besting America’s enemies in developing the internet’s possibilities first.

After President Clinton signed the 1996 Telecommunications Act into law, it was unclear how the Courts would interpret it. When the dust had settled, Section 230 emerged as something of a double-edged sword. It could be used to justify censorship, and it could at the same time be deployed as a corporate liability shield. Most importantly, it provided the runway for the takeoff of Google, Twitter, and Facebook. It basically played an irreplaceable role in creating the Internet as we today know it, where extremely powerful companies are effectively shielded from liability, unlike all other corporate entities.

What Our World with Section 230 Looks Like Today

Section 230 unleashed astonishing American creativity, and its scope and reach continue to be vast. Section 230 currently provides blanket exemption from liability for recommender systems (the algorithms that serve you things they think will interest you), content moderation (in theory, company censorship of content that violates their terms of service; in practice, another matter entirely²), and Internet search.³ No other contemporary American corporations, especially ones with so much power, benefits from such blanket exemption from liability.

Since the services were free, users and their personal data were the product. “The culture of free demanded a business model that could support it. And that was advertising.”⁴

Negative effects on human well-being

The impact on American children and teenagers has been substantial. The Facebook Files⁵ show that Meta knew that its engagement algorithms had adverse effects on the mental health of teenage girls, yet it has done nothing notable to combat those unintended consequences. Instead, Meta’s lawyers have invoked Section 230 in lawsuits to defend itself against efforts to hold it liable for serious harms. Jonathan Haidt has argued that the replacement of children’s collaborative play with solo screen time, especially on social media, presents an array of developmental dangers.⁶

More generally, today’s polarized social media ecosystem continues to spill over to pollute the public sphere in self-reinforcing ways. Recommender algorithms mediate content and optimize

¹ Network effect winners refers to the companies or services that become more useful as more people use them. Companies such as Amazon, Facebook, and Google are examples of network effect winners.

² See Allison Stanger, “The First Amendment Meets the Virtual Public Square,” in Lee Bollinger and Geoffrey Stone, eds., Special Issue on the Future of Free Speech, *Daedalus*, summer 2024, and Allison Stanger, *Who Elected Big Tech?* (Yale University Press, 2025).

³ https://www.supremecourt.gov/DocketPDF/21/21-1333/252653/20230119140359911_21-1333%20Brief%20of%20Information%20Science%20Scholars.pdf

⁴ <https://www.technologyreview.com/2023/10/17/1081194/how-to-fix-the-internet-online-discourse/>

⁵ <https://fbarchive.org>.

⁶ Jonathan Haidt, *The Anxious Generation: How the Great Rewiring of Childhood is Causing an Epidemic of Mental Illness* (New York: Simon and Schuster, 2024). For excellent and up to date data analysis, see <https://www.anxiousgeneration.com>.

for engagement. We have learned that humans are most engaged by that which enrages them. The toxic exchanges online spill over into society at large, prompting further on-line rage-fueled extremism and hate.

The online world brought to life by Section 230 now dehumanizes us by highlighting our own insignificance. Social media and cancel culture make us feel small and vulnerable, where human beings crave feeling large and living lives of meaning, which cannot blossom without a felt sense of personal agency that our laws and institutions are designed to protect. While book publishers today celebrate the creative contributions of their authors, for-profit Internet platforms do not. They instead harvest our data to increase their profit margins without appropriate compensation for the digital fumes of our personal lives and accomplishments.

Negative effects on Democracy

If Section 230 persists in the age of AI, the health of liberal democracy will be irreparably compromised. Foreign electoral interference and viral toxicity are weapons of those intent on subverting democracy and American ideals. Holding elections in 2024 with Section 230 intact and the possibilities for automated disinformation unlimited puts a weapon in the hands of our enemies that could do great damage to American political institutions.

To date, content moderation has often been beholden to the quest for attention and engagement, disregarding the stated corporate terms of service. Rules are bent to maximize engagement through inflammation. The excuse is that this is not censorship, but is that true? Arbitrary rules, doxing practices, and cancel culture have led to something hard to distinguish from censorship for the sober and well-meaning. At the same time, the amplification of incendiary free speech by bad actors encourages mob rule. All of this takes place under Section 230's liability shield, which effectively gives tech companies carte blanche for a short-sighted version of self-serving behavior. Disdain for these companies—which found a way to be more than carriers, and yet not publishers—is the only thing everyone in America seems to agree on now.⁷

Section 230 has played an enormous part in creating a national virtual public square, drowning out plural voices and facilitating polarized but violently vocal conformity on both the extreme right and extreme left. It squeezes out the middle of the political spectrum and thereby the ability to engage in the reasonable and moderate debate that deliberative democracy requires.

Section 230 has also created fictitious platforms that are in reality publishers, since they curate the content via recommender algorithms and content moderation. Traditional media is held liable for publishing defamation and untruths, while Big Tech companies are accountable only to their shareholders.

⁷ Jaron Lanier and Allison Stanger, "The One Internet Hack that Could Save Everything," *Wired*, February 13, 2024. <https://www.wired.com/story/the-one-internet-hack-that-could-save-everything-section-230/> Non-profits like Wikipedia are concerned that their enterprise could be shut down through gratuitous defamation lawsuits that would bleed them dry until they ceased to exist (such as what happened with Gawker). I am not convinced this is a danger for Wikipedia, since their editing is done by humans who have first amendment rights, and their product is not fodder for virality, but for a good argument that it is, see <https://medium.com/wikimedia-policy/if-congress-repeals-section-230-what-will-that-mean-for-wikipedia-691559dfb2c5>

Imagining a World Without Section 230

Since Section 230's network effects were anticipated at its inception, it should have had a sunset clause, but it did not. Rather than focusing exclusively on what could be lost by its exit, it's useful to consider what the effects, both intended and unintended, of repealing Section 230 might actually be. When we imagine how a post-230 world might affect free speech, commerce, and national security and measure the potential gains against what is initially feared, we discover a world of hope and renewal worth inhabiting.

Free Speech

It no longer makes sense to speak of free speech in traditional terms. The internet has so transformed the nature of the speaker that the definition of speech itself has changed.

The new speech is governed by the allocation of virality in our virtual public square. People cannot simply speak for themselves, for there is always a mysterious algorithm in the room that has independently set the volume of the speaker's voice. If one is to be heard, one must speak in part to one's human audience, in part to the algorithm. It is as if the constitution had required citizens to speak through actors or lawyers who answered to the Dutch East India Company, or some other large remote entity. What power should these intermediaries have? When the very logic of speech must shift in order for people to be heard, is that still free speech? This was not a problem foreseen in the law.⁸

Without Section 230, companies would be liable for the content on their platforms. This would result in an explosion of lawsuits and greater caution in such content moderation, although companies would have to balance such with first amendment rights. Think of all the human jobs that could be generated!

At a stroke, content moderation for companies would be a vastly simpler proposition. They need only uphold the First Amendment, and the Courts would develop the jurisprudence to help them do that, rather than to put the onus of moderation entirely on companies.

We've been here before. When government said the American public owned the airwaves, so television broadcasting would be regulated, they put in place regulations that supported the common good. The Internet affects everyone, and our public square is now virtual, so we must put in place measures to ensure that our digital age public dialogue includes everyone. In the television era, the fairness doctrine laid that groundwork. A new lens needs to be developed for the Internet age.

The virtual public square belongs to everyone, so it is important that its conversations be those in which all voices can be heard. While Section 230 perpetuates an illusion that today's social media companies are common carriers like the phone companies, they are not. Unlike Ma Bell, they curate the content they transmit to users. We need a robust public conversation about what we, the people want this space to look like and what practices and guardrails are likely to

⁸ Jaron Lanier and Allison Stanger, "The One Internet Hack that Could Save Everything," *Wired*, February 13, 2024. <https://www.wired.com/story/the-one-internet-hack-that-could-save-everything-section-230/>

strengthen the ties that bind us in common purpose as a democracy rather than dividing us. Virality might come to be understood as an enemy of reason and human values. We can have culture and conversations without a mad race for total attention.

But perhaps more importantly, without Section 230, first amendment jurisprudence for Web2 and Web3 could at long last be developed. In the past, as we see with the enforcement of the fairness doctrine for television broadcasting, government and the people have been capable of regulating the public sphere, which after all, belongs to all of us, not just corporations. By removing Section 230, the Supreme Court would finally have to weigh in to confront the reality of code being law, as Larry Lessig pointed out over 20 years ago.⁹ Section 230's liability shield has prevented the development of first amendment jurisprudence for the digital age that would bring our democratic institutions into better alignment with the reality of a public square that is national in scope. Without Section 230, recommender algorithms and the virality they spark would be less like to distort speech.

Content moderation for companies after Section 230's repeal would be a vastly simpler proposition. Companies need only uphold the First Amendment, and the courts would finally develop the precedents and tests to help them do that, rather than the onus of moderation being entirely on companies alone. The United States has over 200 years of First Amendment jurisprudence that establishes categories of less protected speech—obscenity, defamation, incitement, fighting words—to build upon, and Section 230 has effectively impeded its development for online expression. The perverse result has been the elevation of algorithms over constitutional law, effectively ceding judicial power to multinational corporations.

The repeal of Section 230 would also be a step in the right direction in addressing what are presently severe power imbalances between government and corporate power in shaping democratic life. It would also shine a spotlight on a globally disturbing fact: the overwhelming majority of global social media is currently in the hands of one man (Mark Zuckerberg), while nearly half the people on earth have a Meta account.¹⁰ How can that be a good thing under any scenario for the free exchange of ideas?

Commerce

Would ending section 230 be catastrophic for internet business as we know it? It is impossible to know the future, but we have recently gained more information about this question. One source of information comes from the experiment undertaken by Elon Musk in his acquisition of Twitter/X. The platform has deliberately supported precisely the kinds of user-generated content that might create liabilities without the protections of section 230. For instance, Alex Jones has been penalized for extraordinarily villainous speech, and yet when X renewed his access, X was immune to related penalties.

⁹ Lawrence Lessig, *Code 2.0* (New York: Basic Books, 2006). In an analysis that still rings true today, Lessig foresaw that computer code could function like and have the force of statutes passed by Congress.

¹⁰ <https://investor.fb.com/investor-news/press-release-details/2023/Meta-Reports-Fourth-Quarter-and-Full-Year-2022-Results/default.aspx>

Has this transformation of Twitter been a success? While it is a private company, limiting external access to financial results, all indications are that it has been a disaster. One major investor estimated more than a 70 percent loss of value¹¹, while Musk himself has declared that the company might go bankrupt.

It appears that, if anything, the repeal of Section 230 might recover some lost value for Twitter/X's investors. What about for the major platforms, like Google and Meta? The result for these titans would probably depend on the details in how 230 is phased out. If the repeal is accomplished with some guidance to avoid an explosion of litigation, then the commercial risks would probably be minimal. A repeal should specify a way for platforms to avoid "gotcha" litigation. There should be an orderly way to adjudicate controversial cases and a principle of reasonable efforts rather than a requirement for absolute perfection.

It is notoriously difficult to predict economic outcomes when rules are changed. Some investors in AI have apparently planned on a world in which the precedent of 230 would also apply to AI-generated transformations of human content. They are in an excellent position to be able to adjust to a world in which that is not the outcome, however. The value of AI to improve productivity, such as making programmers more productive, is by far the main economic motivation for creating it, not the ability to evade paying for creative content.

Let us consider poisonous speech that might bring liabilities to the poster. A post 230 world might motivate the evolution of criminal and civil constraints on hosting speech over a platform, but there is no reason to think that it would greatly strengthen or weaken the fundamentals of free speech. One difference between speech before and after the internet was that the scale of the internet "weaponized" some instances of speech that would not have been as significant before. For instance, an individual yelling threats at someone in passing is quite different from a million people yelling threats at that person, or at their families. This type of amplified, stochastic harassment has become a constant feature of our times – chilling speech - and it is possible that in a post-230 world, platforms will be compelled to prevent it.

It is sometimes imagined that there are only two choices; a world of viral harassment or a world of top-down smothering of speech. But there is a third option; a world of speech in which viral harassment is tamped down but ideas are not. Defining this middle option will require some time to sort out, but it is doable, just as it is possible to define the limits of viral financial transactions to make Ponzi schemes illegal.

Without Section 230, existing large social media companies would have to adapt. Decentralized Autonomous Organizations, (DAOs) such as BlueSky and Mastodon, would become more attractive. The emergent DAO social media landscape should serve to put further brakes on virality, allowing a more regional social media ecosystem to emerge, thereby creating new demand for local media. In an ideal world, networks of DAOs would comprise a new fediverse (a collection of social networking servers which can communicate with each other, while remaining independently controlled), where users would have greater choice and control over the communities of which they are a part.

¹¹<https://arstechnica.com/tech-policy/2024/01/since-elon-musks-twitter-purchase-firm-reportedly-lost-72-of-its-value/>

The current challenge of contemporary social media is the potential for doxing and fake news virality that is impossible to correct, rather than the misinformation itself in a single instance. Without Section 230, this problem of virality could be met head on.

National Security

Getting rid of the liability shield for all countries operating in the United States would have largely unacknowledged positive implications for national security, as well as the profit margins for US-headquartered companies. Foreign electoral interference is not in the interests of democratic stability, precisely because our enemies benefit from dividing us rather than uniting us. All foreign in origin content could therefore be policed at a higher standard, without violating the first amendment or the privacy rights of US citizens. As the National Security Agency likes to emphasize, the fourth amendment does not apply to foreigners and that has been a driver of surveillance protocols since the birth of the Internet. It is probable that the Supreme Court's developing first amendment jurisprudence for social media in a post-230 world would embrace the same distinction. At a stroke, the digital fentanyl that TikTok represents in its American version could easily be shut down, and we could through a process of public deliberation leading to new statutory law collectively insist on the same optimization targets for well-being, test scores, and time on the platform that Chinese citizens currently enjoy in the Chinese version of TikTok (*Douyin*).¹²

There might also be financial and innovation advantages for American companies with this simple legislative act. Any commercial losses for American companies from additional content moderation burdens would be offset by reputational gains and a rule imposed from without on what constitutes constitutionally acceptable content. Foreign electoral interference through misinformation and manipulation could be shut down as subversive activity directed at the Constitution of the United States, not a particular political party.

Liberal democracy depends upon public deliberation to make all citizens feel connected to a common enterprise that they themselves have had a hand in shaping. Techno-authoritarianism, such as what we see on display in China today, might serve the utilitarian goals of the greatest good for the greatest number, but it requires the sacrifice of individual rights at the altar of national security. If platforms were liable for the nefarious foreign interventions they enable, foreign propaganda would be more difficult to accomplish, serving the cause of free and fair elections of the American people, by the American people and for the American people.¹³

¹² 60 Minutes, "TikTok in China versus the United States," November 8, 2022.

<https://www.youtube.com/watch?v=0j0xzuh-6rY>

¹³ For the most recent report on Russian interference in our national debates, see

<https://www.washingtonpost.com/world/2024/04/08/russia-propaganda-us-ukraine/>

American Leadership in Generative AI Innovation Depends on Repealing Section 230

While Section 230 might have been considered more a target for reform rather than repeal prior to the advent of generative AI, it can no longer be so. Social media could be a business success even if its content was nonsense. AI cannot.

There have been suggestions that AI needs Section 230 because large language models train on data and will be better if that data is freely usable with no liabilities or encumbrances. This notion is incorrect. People want more from AI than entertainment. It is widely considered an important tool for productivity and scientific progress. An AI model is only as good as the data it is trained on; indeed, general data improves specialist results. The best AI will come out of a society that prioritizes quality communication. By quality communication, I do not mean deepfakes. I mean open and honest dialogue that fosters understanding rather than vitriol, collaboration rather than polarization, and the pursuit of knowledge and human excellence rather than a race to the bottom of the brain stem.

The attention-grooming model fostered by Section 230 leads to stupendous quantities of poor-quality data. While an AI model can tolerate a significant amount of poor-quality data, there is a limit. **It is unrealistic to imagine a society mediated by mostly terrible communication where that same society enjoys unmolested, high-quality AI.** A society must seek quality as a whole, as a shared cultural value, in order to maximize the benefits of AI. Now is the best time for the tech business to mature and develop business models based on quality.¹⁴

Repealing Section 230 and allowing the ad-based business model to evolve should hold appeal for both Democrats and Republicans. It is a simple piece of legislation—all it takes is deleting twenty-six words, and it represents a unique opportunity for bipartisanship, which is precisely what our country needs.

Our laws should serve the national interest. Section 230 once did, but it now undermines the American interest and serves our enemies rather than American democracy. The time has come to give Section 230 the respectful burial it deserves.

¹⁴ Jaron Lanier and Allison Stanger, “The One Internet Hack that Could Save Everything,” *Wired*, February 13, 2024. <https://www.wired.com/story/the-one-internet-hack-that-could-save-everything-section-230/>

Allison Stanger is Russell Leng '60 Professor of International Politics and Economics at Middlebury College; Co-Director (with Danielle Allen), [GETTING-Plurality](#) Research Network, Harvard University; Senior Fellow, Ash Center for Democratic Governance and Innovation, Harvard Kennedy School; founding member of the Digital Humanism Initiative (Vienna); and an External Professor and Science Board member at the Santa Fe Institute. Stanger's next book, *Who Elected Big Tech?* is under contract with Yale University Press.

Stanger's writing has appeared and/or been reviewed in *The Atlantic*, *Foreign Affairs*, *Foreign Policy*, *Financial Times*, *New Yorker*, *New York Times*, *USA Today*, *Washington Post*, and *Wired*. She is the author of *Whistleblowers: Honesty in America from Washington to Trump* (Yale University Press, 2019) and *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy* (Yale University Press, 2009). She is a contributing writer for *The Atlantic*. Stanger is the co-editor (with Hannes Werthner et. al.) of *Introduction to Digital Humanism: A Textbook* (Springer, 2024), which is open access, and co-editor (with W. Brian Arthur and Eric Beinhocker) of *Complexity Economics* (SFI Press, 2020).

Stanger has been called to testify before Congress on six occasions, by both Republicans and Democrats. She received her Ph.D. in Political Science from Harvard University. She majored in Mathematics as an undergraduate and also has graduate degrees in Soviet Studies and Economics.