



Computer & Communications
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NetChoice

June 23, 2020

The Honorable Michael Doyle
Chairman
House Energy & Commerce Committee
Subcommittee on Communications and
Technology
Washington, DC 20515

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

*Re: Joint Subcommittee Hearing on “A Country in Crisis: How Disinformation Online is
Dividing the Nation”*

Dear Chairman Doyle and Chair Schakowsky:

The undersigned associations appreciate that the Subcommittees are contemplating the importance of effectively responding to disinformation online. Our member companies work aggressively to respond to and remove harmful content online, including disinformation. In just six months in 2018, Twitter, YouTube, and Facebook took actions against over 5 billion posts and accounts.¹

Section 230 of the Communications Decency Act, codified at 47 U.S.C. § 230, is what empowers digital services to respond and quickly take down disinformation online and other harmful content. For example, companies have been relying upon Section 230 to remove dangerous misinformation online.² Just last week, several companies testified before the House Intelligence Committee and discussed what they have been doing to counter and remove disinformation online, including regarding the coronavirus pandemic and racism and police brutality.³

Section 230 enables online services, websites, and many other digital intermediaries to maintain healthy and vibrant ecosystems. It is both a sword and shield against bad actors, limiting liability pertaining to third-party content or behavior, while also enabling services to act promptly against unlawful or injurious content or misbehavior. By protecting intermediary decisions whether content is removed or not, Section 230 encourages services to fight misconduct and protect users from online harms by removing disincentives to moderate. This helps combat online content and

¹ See Transparency Report, [NetChoice.org/TransparencyReport2019](https://www.netchoice.org/TransparencyReport2019).

² See, e.g., Kang-Xing Jin, *Keeping People Safe and Informed About the Coronavirus*, Facebook Blog (June 11, 2020), <https://about.fb.com/news/2020/06/coronavirus/>; Twitter Inc., *Coronavirus: Staying safe and informed on Twitter* (Apr. 3, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19.html; Sundar Pichai, *Coronavirus: How we’re helping*, Google Blog (Mar. 6, 2020), <https://www.blog.google/inside-google/company-announcements/coronavirus-covid19-response/>.

³ Alyza Sebenius & Sarah Frier, *Facebook, Google, Twitter Pledge Vigilance on Disinformation*, Bloomberg (June 18, 2020), <https://www.bloomberg.com/news/articles/2020-06-18/facebook-google-twitter-tell-congress-ready-for-disinformation> (“Google’s YouTube service removed more than 200,000 videos and over 100 million ads to stem disinformation about the coronavirus pandemic and prevent advertisers from profiting.” . . . “Twitter has tracked the threat of disinformation related to recent protests on racism and police brutality spurred by the death of George Floyd at the hands of police in Minneapolis.”).

misbehavior that is abusive, inappropriate, or otherwise objectionable, though lawful.

Narrowing this protection would have the perverse result of impeding online services' and websites' efforts to police bad actors and misconduct. Policymakers should want to strengthen the law that empowers Internet services to take down harmful content rather than weaken it.

Weakening Section 230 protections is likely to produce different responses from different online services. Smaller operators may avoid moderating content at all because online services have less legal liability if they engage in no monitoring. As demonstrated in the 1995 *Stratton Oakmont* decision that Section 230 overturned, removing 99% of inappropriate content could create the appearance of endorsing the 1% that an online service overlooked. An additional outcome may be that firms would exit the market — or never enter it — which would discourage innovation and free expression by all stakeholders and viewpoints. Another likely outcome would be even more aggressive editorial policies. Cautious sites and services, wary of anything that could lead to risk, may only give a platform to establishment viewpoints. Marginalized communities would suffer the most, being subject to increased scrutiny by litigation-wary lawyers hoping to avoid controversy.

At the same time, Section 230 empowers law enforcement to take actions against platforms for anything that is unlawful including any violations of federal criminal law, intellectual property law, illegal trafficking of drugs or weapons, and child protection law.⁴ This means that if the Department of Justice seeks to enforce its criminal law authority against a platform, Section 230 is no barrier. Likewise, if any private party wants to take action against a platform for violations of copyright, trademark, or any other intellectual property law, Section 230 is no barrier.

Moreover, it should go without saying that if something is illegal offline, it is also illegal online. The speaker is *always* liable for the illegal activity and the platform is also liable if there is a violation of federal criminal law, IP law, or any of the other exemptions to Section 230. At the same time, if a platform “is responsible in whole or in part for the creation or development” of the content, Section 230 is no protection.⁵

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

Sincerely,

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

Carl Szabo
Vice President and General Counsel
NetChoice

⁴ See 47 U.S.C. § 230(e)(1)-(5).

⁵ *Id.* § 230(f)(3). This is what allowed the FBI to take down Backpage even before enactment of FOSTA.