September 24, 2020

The Honorable Jan Schakowsky
Chair, Subcommittee on Consumer Protection and Commerce
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member, Subcommittee on Consumer Protection and Commerce
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

RE: Hearing on "Mainstreaming Extremism: Social Media's Role in Radicalizing America"

Dear Chair Schakowsky and Ranking Member McMorris Rodgers:

Consumer Reports (CR) welcomes today's hearing, which will examine the role that social media plays in polarizing and radicalizing Americans, thus accelerating the spread of the violence and harm that extremism can precipitate. Current law which governs online platforms fails to provide sufficient incentives for platforms to reduce misinformation and prevent other abuses, such as artificial amplification: indeed, it even shields platforms when their own algorithms *promote* harmful, misleading, or inflammatory extremist content.[1] Just as the Subcommittee notes that increasingly polarized extremism poses the greatest threat of terrorism, platform-facilitated extremism has contributed to the rapid proliferation of dangerous conspiracy theories like QAnon, which disseminate and promote, for example, anti-vaccination and anti-mask sentiments that pose significant risk to consumer health.[2] Social media platforms must

[1] John Bergmayer, "What Section 230 Is and Does — Yet Another Explanation of One of the Internet's Most Important Laws," Public Knowledge (May 14 2019), https://www.publicknowledge.org/blog/what-section-230-is-and-does-yet-another-explanation-of-one-of-the-internets-most-important-laws/.

[2] Committee on Energy and Commerce Staff to Subcommittee on Consumer Protection and Commerce Members and Staff, September 21, 2020, "Hearing on 'Mainstreaming Extremism: Social Media's Role in Radicalizing America,'" https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/09.24.20%20CPC%20Hearing%20Memo.pdf; *see also* Ben Collins, "How QAnon rode the pandemic to new heights — and fueled the viral anti-mask phenomenon" NBC News (August 14 2020): https://www.nbcnews.com/tech/tech-news/how-qanon-rode-pandemic-new-heights-fueled-viral-anti-mask-n1236695; *see also* Tanya Lewis, "Nine COVID-19 Myths That Just Won't Go Away," Scientific American (August 18, 2020), https://www.scientificamerican.com/article/nine-covid-19-myths-that-just-wont-go-away/.

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be held accountable for the harm caused by, and sufficiently incentivized to prevent and mitigate, the kinds of harms that their businesses currently enable, amplify, and profit from.

Consumer Reports' Work on Platform Responsibility

This Subcommittee's hearing ("Buyer Beware: Fake and Unsafe Products on Online Marketplaces") held earlier this year, at which CR testified, touched upon some of the difficult challenges caused by online disinformation,[3] as did June's joint hearing on divisive disinformation online ("A Country In Crisis: How Disinformation Online Is Dividing The Nation"), to which we also expressed our concerns via letter.[4] We urged stronger incentives for platforms to protect consumers from fraudulent and illegal consumers in our comments to the Federal Trade Commission on their Endorsement Guidelines updates in June.[5] And last month, we submitted public comments to the Federal Communications Commission in part further highlighting the demonstrable need to strengthen incentives for effective content moderation.[6] Since those hearings, the issues being discussed today have come into even sharper relief: the spread of harmful, extreme conspiracy theories and misinformation has continued despite various platforms' attempts to patrol and remove the offending content.[7]

This past spring, a CR journalist created seven paid ads that intentionally violated Facebook's pledge to prohibit COVID-19 ads on its platform that encouraged people to drink bleach or ignore social distancing guidelines. Sadly, all seven ads—which included claims that "coronavirus is a HOAX" or to "stay healthy with SMALL daily doses" of bleach—were approved. While CR pulled the ads before they were published by Facebook and viewed by the public, this demonstrates just one of many instances in which Facebook was unable to stop not just the spread of misinformation, but would have been paid for the proliferation of that dangerous misinformation, despite an ad approvals process. This type of paid misinformation

[3] CR's March 4, 2020 testimony is available online here: https://advocacy.consumerreports.org/research/testimony-of-david-friedman-vice-president-advocacy-consumer-reports-for-u-s-house-hearing-on-fake-and-unsafe-products-on-online-marketplaces/.
[4] CR's June 24, 2020 letter can be found here: https://advocacy.consumerreports.org/research/cr-letter-on-joint-hearing-a-country-in-crisis-how-disinformation-online-is-dividing-the-nation/.
[5] CR's June 22, 2020 comments can be found here: https://advocacy.consumerreports.org/wp-content/uploads/2020/06/CR-Comments-on-FTC-Endorsement-Guides-.pdf.
[6] CR's September 2, 2020 comments to the FCC can be found here:https://advocacy.consumerreports.org/research/cr-comments-to-the-fcc-on-section-230/.
[7] Sheera Frenkel and Tiffany Hsu, "Facebook Tried to Limit QAnon. It failed." New York Times (September 18. 2020), https://www.nytimes.com/2020/09/18/technology/facebook-tried-to-limit-qanon-it-failed.html.

could cause obvious harm to consumers—and is one of many such issues that QAnon and other extremist offshoots have helped foment over the past several months.[8]

Platforms Do Not Have Sufficient Incentives to Address Misinformation and Illegal Activity

As the Subcommittee noted, while extremists use a wide range of social media platforms, between 2005 and 2016, the majority of extremists (near two-thirds) used Facebook to promote extremism.[9] Similarly, now QAnon extremism has found a distinct home on the platform, with Facebook failing to act decisively and explicitly on QAnon until August of this year—a month after Twitter, and nearly two *years* after Reddit explicitly banned key communities centered on the matter—after which, a number of the conspiracy theorists made their new home on Facebook (and more recently, on Facebook-owned Instagram.).[10] New York Times cybersecurity reporter Sheera Frenkel reflected this week on a parallel rise in extremist content online back in 2015:

> I wonder how different our world would look if Facebook, YouTube and Twitter joined Reddit in taking coordinated, effective action against QAnon. That's what the companies did in 2015 when the Islamic State was using social media to recruit new followers. You could see almost in real time that ISIS lost much of its ability to recruit online.
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> In my mind, that was the clearest example of the internet companies — when they were motivated to do so — taking action to remove a dangerous group that was pervasive on their sites. This action was supported by the White House, and the internet companies felt empowered to make an overwhelming show of force.[11]

Most striking in Frenkel's observation is the caveat: "when they were motivated to do so." While Section 230 of the Communications Decency Act (Section 230) makes it possible for platforms to moderate content, it does nothing to actively *encourage* that moderation. Internet platforms clearly have the capacity to do more to combat misinformation; while they bear some goodwill costs for providing a bad experience to users, they do not bear all the societal costs

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[8] Kaveh Waddell, "Facebook Approved Ads With Coronavirus Misinformation" Consumer Reports (April 7. 2020), https://www.consumerreports.org/social-media/facebook-approved-ads-with-coronavirus-misinformation/; *see also* Marianna Spring and Mike Wendling, "How Covid-19 myths are merging with the QAnon conspiracy theory" BBC (September 3. 2020), https://www.bbc.com/news/blogs-trending-53997203.

[9] The National Consortium for the Study of Terrorism and Responses to Terrorism, "The Use of Social Media by United States Extremists," (2018), www.start.umd.edu/publication/use-socialmedia-united-states-extremists.

[10] Casey Newton, "Facebook's big QAnon crackdown may have come too late" The Verge (August 20, 2020), https://www.theverge.com/interface/2020/8/20/21375381/facebook-qanon-purge-content-policy-tide-pods; Kaitlyn Tiffany, "The Women Making Conspiracy Theories Beautiful: How the domestic aesthetics of Instagram repackage QAnon for the masses" The Atlantic, (August 18, 2020), https://www.theatlantic.com/technology/archive/2020/08/how-instagram-aesthetics-repackage-qanon/615364/

[11] Shira Ovide, "How Facebook Can Slow QAnon For Real" New York Times, (September 21, 2020), https://www.nytimes.com/2020/09/21/technology/facebook-qanon.html.

from extremism and misinformation, and lack of competition leaves consumers few alternatives in the marketplace. Users who wish to promote extremist content (either in good faith or bad) can amplify their message by creating fake accounts and engagement to game sorting algorithms to artificially boost visibility. While platforms prohibit such "coordinated inauthentic activity," the rules are often unclear, and enforcement is sporadic.[12] Indeed, platforms today have material *disincentives* to moderate deceptive and harmful activity: investing in comprehensive platform moderation would be expensive,[13] while fake reviews, views, accounts, and other social engagement artificially amplify the metrics by which platforms are judged by users and investors—and extremist content, in particular, often begets even more engagement—which can in turn continue to spread extremism and the harmful misinformation that can accompany it.[14] And indeed, it has already been reported that platforms, even once explicitly aware of these trends, have actively stifled internal efforts to address them.[15] Without strong counter-incentives, platforms cannot be trusted to govern themselves to standards adequate to protect even their own users—let alone consumers broadly—from harm.

Potential Reforms

There are a number of ways that Congress can provide strong incentives and sufficient motivations for platforms to more effectively address and mitigate the harms that they facilitate. As CR has previously discussed, any conversation around content moderation will—and should—invariably include discussion of Section 230 as it nears a quarter-century in age. There are, of course, further methods for both incentivizing platforms to take responsibility and for holding

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[12] Evelyn Douek, "What Does "Coordinated Inauthentic Behavior" Actually Mean?" Slate, (July 2, 2020) https://slate.com/technology/2020/07/coordinated-inauthentic-behavior-facebook-twitter.html; *see also* Judd Legum, "Facebook admits Ben Shapiro is breaking its rules" popular.info (July 2, 2020), https://popular.info/p/facebook-admits-ben-shapiro-is-breaking; *see also* Craig Silverman, Ryan Mac, and Pranav Dixit, " 'I Have Blood on My Hands': A Whistleblower Says Facebook Ignored Global Political Manipulation" Buzzfeed, (September 14, 2020), https://www.buzzfeednews.com/article/craigsilverman/facebook-ignore-political-manipulation-whistleblower-memo

[13] Paul M. Barrett, "Who Moderates the Social Media Giants? A Call To End Outsourcing" NYU Stern Center for Business and Human Rights (June 2020), https://bhr.stern.nyu.edu/tech-content-moderation-june-2020; Deepa Seetharaman, "Facebook Throws More Money at Wiping Out Hate Speech and Bad Actors" The Wall Street Journal (May 15, 2018), https://www.wsj.com/articles/facebook-throws-more-cash-at-a-tough-problem-stamping-out-bad-content-1526393256.

[14] Nicholas Confessore et al., "The Follower Factory*"* New York Times (Jan. 27, 2018), https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html; *see also* Max Fisher and Amanda Taub, "How Everyday Social Media Users Become Real-World Extremists" New York Times (April 25, 2018), https://www.nytimes.com/2018/04/25/world/asia/facebook-extremism.html; *see also* Katherine J. Wu, "Radical ideas spread through social media. Are the algorithms to blame?" PBS (March 28, 2019), https://www.pbs.org/wgbh/nova/article/radical-ideas-social-media-algorithms/.

[15] Jeff Horwitz and Deepa Seetharaman, "Facebook Executives Shut Down Efforts to Make the Site Less Divisive" The Wall Street Journal (May 26, 2020), https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499.

them accountable for harm that they enable. Ultimately, action in these spaces will ideally be driven by a return to an innovative, transparent, competitive, and open internet: one where platforms are better held accountable for activity they facilitate, and also perhaps one where, structurally, the activity on, and decisions of, any one platform simply cannot ultimately cause the same level of harm as is possible today.

Section 230 originally aimed to encourage the open internet, by broadly insulating online platforms from being treated as publishers, insofar as an offline publication is subject to liability for the content it distributes. Yet any serious discussion on the internet and on content moderation in 2020 must discuss the sheer scope of immunity it presently grants to platforms. Combating misinformation online alone is shaping up to be among the great challenges of the digital age—let alone extremism-fueled misinformation. CR does not support the wholesale repeal of Section 230 by any stretch. Indeed, as discussed in our public comments to the Federal Communications Commission, we especially oppose any limiting of Section 230 immunities in response to platforms fact-checking or providing context on misinformation.[16]

However, we would encourage a thorough Congressional re-evaluation of what Section 230 updated for the modern era might look like, as a number of creative proposals deserve further engagement and consideration. Possibilities range from propositions adding a reasonableness standard,[17] to those limiting the immunities for civil rights violations,[18] to those restricting immunities for paid,[19] targeted,[20] or algorithmically recommended[21] content —amongst a number of other proposals that could incentivize and functionally require improved platform moderation.

Congress could also consider legislation and structural remedies designed to ensure a fairer, more transparent, less concentrated online marketplace. Increasing competitive pressure on online platforms, specifically, could help in a few key ways. Competition could help push platforms toward delivering a product that is more effectively and transparently moderated, and

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[16] CR's September 2, 2020 comments to the FCC can be found here:https://advocacy.consumerreports.org/research/cr-comments-to-the-fcc-on-section-230/.

[17] Danielle Keats Citron and Benjamin Wittes, The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity, 86 Fordham L. Rev. 419-423 (2017).

[18] Pauline Kim, "Manipulating Opportunity" (October 9, 2019). Washington University in St. Louis Legal Studies Research Paper No. 19-10-12, 106 Va. L. Rev. 867 (2020), Available at SSRN: https://ssrn.com/abstract=3466933; *see also* Olivier Sylvain, "Discriminatory Designs on User Data" (April 6, 2018). Knight First Amendment Institute at Columbia University, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3157975.

[19] John Bergmayer, "How to Go Beyond Section 230 Without Crashing the Internet" Public Knowledge (May 21, 2019), https://www.publicknowledge.org/blog/how-to-go-beyond-section-230-without-crashing-the-internet/.

[20] U.S. Senate, S. 4337, "Behavioral Advertising Decisions Are Downgrading Services Act" 116th Congress (July 28, 2020), https://www.congress.gov/bill/116th-congress/senate-bill/4337/text.

[21] Roger McNamee, "Big Tech Needs to Be Regulated. Here Are 4 Ways to Curb Disinformation and Protect Our Privacy," Time (July 29, 2020), https://time.com/5872868/big-tech-regulated-here-is-4-ways/; Bergmayer, *supra* note 19.

therefore of higher quality for consumers. Increased competitive pressure could also come in the form of interoperability: other companies developing different sorting algorithms for media feeds could introduce diversity to the ecosystem, decreasing the reach of any one platform's moderation inclinations or abilities.[22] To this effect, the proposed bipartisan Filter Bubble Transparency Act, designed to empower consumers with knowledge of recommendation algorithms or be able to see a feed without opaque algorithmic curation, could further transparency into algorithmic recommendations and ultimately help mitigate the spread of extremist content.[23] At the same time, efforts to facilitate and increase competition could reduce the market share of any given platform, and could decrease the reach, and therefore the efficacy of extremist content on its network.

Congress could further consider increasing and improving resourcing for the FTC and other relevant agencies, as Section 5 of the FTC Act may even *require* some level of moderation of harmful content to protect platform users. For at least fifteen years, the FTC has interpreted its Section 5 unfairness authority to require companies to use reasonable data security to prevent third-party abuse of their networks—and it has elsewise previously interpreted Section 5 to require policing of others' actions—such as in Neovi and LeadClick.[24] This could reasonably extend, too, to protecting platform users from harmful extremism and related misinformation—and the larger the platform, the greater responsibility to bear and potential harm to remediate.[25] Ensuring that the FTC has adequate resources to investigate and ensure adequate consumer protections on platforms may also serve to incentivize platforms to improve their moderation capabilities.

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[22] U.S. Senate, S. 2658, "Augmenting Compatibility and Competition by Enabling Service Switching Act of 2019" 116th Congress (October 22, 2019); https://www.congress.gov/bill/116th-congress/senate-bill/2658/text.; CR's August 24, 2020 comments to the FTC on data portability and interoperability can be found here: https://advocacy.consumerreports.org/research/cr-comments-to-the-ftc-on-data-portability/.

[23] U.S. Senate, S. 2763, "Filter Bubble Transparency Act" 116th Congress (October 31, 2019), https://www.congress.gov/bill/116th-congress/senate-bill/2763/text; Bergmayer, *supra* note 19.

[24] *See* Footnote 6. *See also* Press Release, "FTC Action Results in Contempt Order Against Online Check Writing Marketers", Fed. Trade Comm'n (Jul. 27, 2012), https://www.ftc.gov/news-events/press-releases/2012/07/ftc-action-results-contempt-order-against-online-check-writing; Press Release, "U.S. Circuit Court Finds Operator of Affiliate Marketing Network Responsible for Deceptive Third-Party Claims Made for Lean-Spa Weight-Loss Supplement" Fed. Trade Comm'n (Oct. 4, 2016), https://www.ftc.gov/news-events/press-releases/2016/10/us-circuit-court-finds-operator-affiliate-marketing-network.

[25] Alexandra Berzon, Shane Shifflett, and Justin Scheck, "Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products" Wall Street Journal (August 23, 2019), https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990; *see also* Olivia Solon, "Facebook Management Ignored Internal Research Showing Racial Bias, Employees Say" NBC News (July 23, 2020), https://www.nbcnews.com/tech/tech-news/facebook-management-ignored-internal-research-showing-racial-bias-current-former-n1234746 https://www.nytimes.com/2019/11/28/business/online-reviews-fake.html.

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The rapid spread of extremism online, and the resultant proliferation of false remedies, conspiracy theories, misinformation, and real-world anti-vaccination and anti-masking sentiment poses significant risk to consumers, opening up huge potential for consumer harm. American consumers deserve relief from the extremism-driven harms that online platforms facilitate and amplify. Online platforms must be better held to account for the spread of extremism, and in some way liable for—or otherwise significantly more incentivized to appropriately handle—or otherwise still, restructured in ways that can help mitigate the rising tide of extremism and its accompanying harms to consumers. We look forward to working with the Subcommittee, colleague organizations, and industry to develop and implement novel solutions to meet this challenge of our time and ensure a safe online marketplace for American consumers.

Thank you for considering CR's views and allowing us to contribute to the ongoing discussion as we all seek to secure a safe, fair online marketplace for American consumers.

Sincerely,

Laurel Lehman
Policy Analyst

Jonathan Schwantes
Senior Policy Counsel

Justin Brookman
Director, Technology Policy