

ONE HUNDRED SEVENTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

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January 3, 2022

Mr. Rick Lane
CEO
Iggy Ventures, LLC
P.O. Box 301
Garrett Park, MD 20896

Dear Mr. Lane:

Thank you for appearing before the Subcommittee on Consumer Protection and Commerce on Thursday, December 9, 2021, at the hearing entitled “Holding Big Tech Accountable: Legislation to Build a Safer Internet.” I appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from certain members of the Committee. In preparing your answers to these questions, please address your responses to the member who has submitted the question in the space provided.

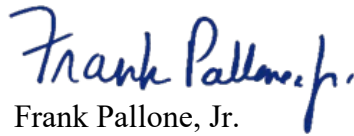
To facilitate the printing of the hearing record, please submit your responses to these questions no later than the close of business on Monday, January 17, 2022. As previously noted, this transmittal letter and your response, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by e-mail in the Word document provided to Ed Kaczmariski, Policy Analyst, at ed.kaczmariski@mail.house.gov. To help in maintaining the proper format for hearing records, please use the document provided to complete your responses.

Mr. Rick Lane

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ed Kaczmariski with the Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." with a stylized flourish at the end.

Frank Pallone, Jr.
Chairman

Attachment

cc: The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer Protection and Commerce

The Honorable Gus Bilirakis
Ranking Member
Subcommittee on Consumer Protection and Commerce

Attachment—Additional Questions for the Record

**Subcommittee on Consumer Protection and Commerce
Hearing on
“Holding Big Tech Accountable: Legislation to Build a Safer Internet.”
December 9, 2021**

Mr. Rick Lane, CEO, Iggy Ventures, LLC

The Honorable Michael C. Burgess (R-TX)

1. Mr. Rick Lane, the Courts ruled in *Force v. Facebook* that a platform arranging and distributing third-party information – such as through the use of algorithms – does not amount to being an information content provider; therefore, algorithms as they are used by internet platforms to promote user content will receive Section 230 immunity. Should Congress evaluate law changes to increase transparency and accountability of algorithms used by internet platforms?

Response: Yes. In order to address concerns such as misinformation, bias, hate speech, or other “awful but lawful” speech related issues, Congress should enact strong transparency requirements that apply to both algorithmic and non-algorithmic content moderation. I am concerned that singling out just algorithmic moderation could raise First Amendment issues in light of the recent federal district court decision in *NetChoice v. Paxton*.

Democrats and Republicans alike have expressed frustration with the opaque and inconsistent way platforms engage in content moderation. The Supreme Court has held that the First Amendment allows the government to require that commercial enterprises provide “purely factual and uncontroversial information about the terms under which [their] services will be available,” where the “disclosure requirements are reasonably related to the State’s interest in preventing deception of consumers.” In any CDA 230 reform legislation, Congress should adopt transparency provisions that require each platform to: 1) publicly disclose its content moderation policies; 2) create a process by which users can file a complaint with the platform arguing it did not follow its own policies; 3) create a process by which users can appeal a platform’s decision to take down or leave up specific content, or to terminate or not terminate service to a user; and 4) publicly disclose information about the decisions the platform has made to take down or leave up certain content, or to terminate or not terminate service to a user.

Platforms that violate these transparency requirements or policies contained in their terms of service would lose the section 230 shield and thus could be culpable for breach of contract or a deceptive trade practice. These transparency requirements would also better enable individuals and businesses to decide what platforms to use—potentially prompting new entrants and existing providers to compete based on content moderation practices,

thereby promoting innovation. In addition, the public disclosure requirements would allow policymakers, law enforcement, and researchers to track problematic trends—either with users’ online misbehavior or the platforms’ moderation practices—and develop strategies to address them.

We must return the rule of law to the Internet. Until we hold online platforms (TikTok, Reddit, Facebook, Google, etc.) and other Internet intermediaries (Cloudflare, Verisign, GoDaddy, the Internet Society (ISOC), Namecheap, and even the Internet Corporation for Assigned Names and Numbers (ICANN), etc.) equally accountable as brick-and-mortar businesses, people will be less safe online. Therefore we need to restore to platforms the ordinary duty of care that would apply but for courts’ current, overbroad application of section 230. Congress should amend section 230 to require that platforms and other Internet intermediaries take reasonable steps to curb illegal conduct online as a condition of receiving the section’s protections. If platforms could be held both criminally and civilly liable for irresponsibly enabling such transactions, they’d be much more likely to pay attention and curb the activity. By making simple language changes to section 230 that restore the duty of reasonable care, Congress could help combat not just Internet opioid and fentanyl sales but all current and future illegal activity online. And in a non-regulatory, pro-free market way that both conservatives and liberals should be able to support: creating meaningful incentives for platforms to find the most effective and efficient ways to prevent online harm.

Congress also needs to rectify the “Dark Whois” problem that was created by an overly broad interpretation of the European Unions General Data Protection Regulation (GDPR) by immediately passing legislation requiring domain name providers like Verisign, Godaddy, NameCheap, to once again make accurate WHOIS information available for legitimate purposes. The lack of access to WHOIS data is hindering not only cyber security and anti-terrorism efforts, but investigations into illegal online drug sales. What good is it to have “transparency and accountability” requirements for websites if you cannot find out “Whois” behind those websites. It is critical that for any legislative solution being considered by Congress to address these real concerns to work there must be an open and accurate Whois database. Without an open and accurate Whois, the Internet becomes no better than the Dark Net.

Unfortunately, after five years of the ICANN multistakeholder process that was designed to fix the Whois/GDPR problem there is no [practical solution insight](#). That is why Congress and the Department of Commerce can no longer continue to put ICANN’s multistakeholder process over the health, safety, and cyber security of the American people and must work to immediately enact legislation to fix the Whois/GDPR problem.

The Honorable Brett Guthrie (R-KY)

1. The United States has seen historic levels of opioid abuse leading to tragic deaths over the last several years. In my home state of Kentucky, drug overdoses have climbed year-over-year between 2020 and 2021. The opioid crisis has been exacerbated by deadly fentanyl being trafficked into our communities through our Southern Border and on social media platform millions of Americans are using. The Energy and Commerce Committee has passed several bills to address this epidemic. I am especially concerned that illegal drugs are still available online through illegal pharmacies and even social media platforms. This type of illegal activity online is troubling. I have draft legislation that is part of the Republican Big Tech platform that would help prevent this from happening on these sites by requiring internet platforms to implement and maintain reasonable content moderation policies and practices to address the illegal sale of drugs on their platforms. Additionally, the Federal Trade Commission and State Attorneys General would ensure enforcement of these policies.

a. Mr. Lane, do you think legislation in this space is enough to adequately devote resources and appropriate information sharing between Big Tech and the law enforcement community to address this illegal and potentially deadly activity?

Response: I strongly believe legislation is necessary to help curtail the opioid and fentanyl epidemic, as well as curtailing other illegal activities that are occurring on online platforms. In order to curtail these illegal activities, Congress should focus on three main issues: 1) reforming section 230; 2) creating more transparency in the way Internet platforms operate, while protecting Internet users' privacy; and 3) restoring access to WHOIS data.

b. How can this committee strike a balance between the need to halt this illegal activity on these platforms and holding companies accountable while also promoting innovation as we consider possible solutions?

Response: We must return the rule of law to the Internet. Until we hold online platforms (TikTok, Reddit, Facebook, Google, etc.) and other Internet intermediaries (Cloudflare, Verisign, GoDaddy, the Internet Society (ISOC), Namecheap, and even the Internet Corporation for Assigned Names and Numbers (ICANN), etc.) equally accountable as brick-and-mortar businesses, people will be less safe online. We need to restore to platforms the ordinary duty of care that would apply but for courts' current, overbroad application of section 230. Congress should amend section 230 to require that platforms and other Internet intermediaries take reasonable steps to curb illegal conduct online as a condition of receiving the section's protections. If platforms could be held both criminally and civilly liable for irresponsibly enabling such transactions, they'd be much more likely to pay attention and curb the activity. By making simple language changes to section 230 that restore the duty of reasonable care,

Congress could help combat not just Internet opioid and fentanyl sales but all current and future illegal activity online. And in a non-regulatory, pro-free market way that both conservatives and liberals should be able to support: creating meaningful incentives for platforms to find the most effective and efficient ways to prevent online harm.

Congress also needs to rectify the “Dark Whois” problem that was created by an overly broad interpretation of the European Unions General Data Protection Regulation (GDPR) by passing legislation requiring domain name providers like Verisign, Godaddy, NameCheap, to once again make accurate WHOIS information available for legitimate purposes. The lack of access to WHOIS data is hindering not only cyber security and anti-terrorism efforts, but investigations into illegal online drug sales. As the Federal Drug Administration (FDA) stated in a August 13, 2020 letter to Representative Latta,

“ Access to WHOIS information has been a critical aspect of FDA’s mission to protect public health. Implementation of the E.U. General Data Protection Regulation (GDPR) has had a detrimental impact on FDA’s ability to pursue advisory and enforcement actions as well as civil and criminal relief in our efforts to protect consumers and patients.”

“WHOIS data has also been widely used in FDA’s criminal investigations to identify individuals and organizations selling online a variety of unapproved/uncleared/unauthorized products such as opioids, counterfeit or adulterated drugs as well as purported dietary supplements containing deleterious or undeclared ingredients. Most recently, lack of WHOIS transparency significantly hindered FDA’s ability to identify sellers of fraudulent and unproven treatments for COVID-19 as well as illegitimate test kits and counterfeit or substandard personal protective equipment. These cases range from a simple website marketplace to sophisticated transnational cybercrime networks involving thousands of websites, hidden servers, dark web applications and virtually linked co-conspirators. Many of these criminal conspiracies were linked or identified via historical WHOIS analysis.”

Unfortunately it is now going on five years of the ICANN multistakeholder process that was designed to fix the Whois/GDPR problem with [no practical solution insight](#). Congress and the Department of Commerce can no longer continue to put ICANN’s multistakeholder process over the health, safety, and cyber security of the American people and must work to immediately enact legislation to fix the Whois/GDPR problem.

Another step Congress could take is to enact transparency provisions that require each platform to: 1) publicly disclose its content moderation policies; 2) create a process by which users can file a complaint with the platform arguing it did not follow its own policies; 3) create a process by which users can appeal a platform's decision to take down or leave up specific content, or to terminate or not terminate service to a user; and 4) publicly disclose information about the decisions the platform has made to take down or leave up certain content, or to terminate or not terminate service to a user.

Platforms that violate these transparency requirements or policies contained in their terms of service would lose the section 230 shield and thus could be culpable for breach of contract or a deceptive trade practice. These transparency requirements would also better enable individuals and businesses to decide what platforms to use—potentially prompting new entrants and existing providers to compete based on content moderation practices, thereby promoting innovation. In addition, the public disclosure requirements would allow policymakers, law enforcement, and researchers to track problematic trends—either with users' online misbehavior or the platforms' moderation practices—and develop strategies to address them.