**In the conversation on Section 230 immunity for applications that employ AI algorithm, you noted that AI is a "content creator" and thus a "product," creating and editing content. It should therefore not maintain Section 230 immunity against liability, versus protecting third party content creators. Do you see this as simply amending the scope of the Section 230 immunity to create an exemption for these content creators? Given AI algorithms are used in a variety of ways, what limits to making content creators that use AI algorithms now liable? Would you see maintaining Section 230 immunity for platforms that allow applications on their platforms, even if the applications use AI algorithms?**

1. Yes, I see this as simply amending the scope of Section 230 immunity for generative AI products. I recommend Congress adds a narrow exemption to Section 230 for generative AI products, including AI algorithms.

While Section 230 as currently written is clearly not meant to apply to content creators nor to a company's product design, like algorithms, we rely on courts to apply the correct interpretation of this statute. Unfortunately, courts have expanded Section 230 immunity to even include immunity for a company's own wrongdoing through their product design features, like algorithms. The tide may be turning now as some courts work to restore Section 230's interpretation to the original meaning of the law. The Third Circuit recently revived a lawsuit against TikTok for recommending a blackout challenge to a 10-year-old girl in her "For You" feed. In his concurrence to the decision, Judge Paul Matey wrote that Section 230 does not shield TikTok for its "knowing distribution and targeted recommendation of videos it knew could be harmful." This "targeted recommendation" is TikTok's algorithm, it is their product design.

Thus, while Section 230 should not apply to generative AI products like AI algorithms, Congress should help clarify this for the judiciary by amending Section 230 to make an explicit carve-out for algorithms and generative AI products. Congress should pass a very simple and narrow law, like one bipartisan bill introduced by Senators Hawley and Blumenthal last Congress that amends Section 230 (e) to say "Nothing in section (other than subsection (c)(2)(A)) shall be construed to impair or limit any claim in a civil action or charge in a criminal prosecution brought under Federal or State law against the provider of an interactive computer service if the conduct under lying the claim or charge involves the use or provision of generative artificial intelligence by the interactive computer service.''; and in subsection (f), by adding at the end the following: ''GENERATIVE ARTIFICIAL INTELLIGENCE.—The term 'generative artificial intelligence' means an artificial intelligence system that is capable of generating novel text, video, images, audio, and other media based on prompts or other forms of data provided by a person."[1]

I would also caution Congress to be aware that AI companies will also try to claim First Amendment protection for their harms, and so members should be careful in how they categorize or label AI products. While the outputs from AI algorithms may be in the form of human language, it should not be considered protected speech. The output is not conveying a message from any human person or corporation, but rather it is simply the resulting amalgamation of data

[1] S.1993 - A bill to waive immunity under section 230 of the Communications Act of 1934 for claims and charges related to generative artificial intelligence, 118th Congress, https://www.congress.gov/bill/118th-congress/senate-bill/1993#:~:text=Introduced%20in%20Senate%20(06%2F14,provided%20by%20a%20third%20party.

generated by a computer's process of pattern recognition, which can take the form of words, images, audio, or video. Even though companies train the AI product they are not ultimately in control of it, and so cannot be expressing a message through it. And so, AI products should receive neither protection – they are neither third-party speech that a platform is hosting to be protected by Section 230, nor are they producing an original message of the company, to be protected by the First Amendment. And so in any amendment Congress passes to clarify that AI algorithms should not receive Section 230 immunity, it would not want to define the terms of that exemption in such a way that implies AI algorithms should receive First Amendment protection.

2. As mentioned above, as currently written Section 230 should already make content creators that use AI algorithms liable, since these AI products are not hosting third-party content but generating an original product. But by amending Section 230, Congress would make that abundantly clear to the courts. And current exemptions in Section 230, like exemptions for criminal laws and sex trafficking laws, can most certainly be applied to a platforms' AI algorithms. If an AI algorithm is being used to commit a crime or facilitate sex trafficking on a platform, for example, the platform can be held liable under those existing exemptions.

3. Section 230 immunity would be maintained for platforms in general, as they are hosting third-party content, but if Section 230 were amended to exempt AI algorithms, then those exemptions should apply to applications employing AI algorithms that are integrated into existing platforms. And in that sense the platform would be liable for harms caused by the AI algorithms from the application it integrated into its platform. It is a platform's choice to integrate any application with AI algorithms, so they should be held liable for its harms.