



Computer & Communications
Industry Association
Tech Advocacy Since 1972

March 24, 2021

The Honorable Michael F. Doyle
Chair
House Committee on Energy & Commerce
Subcommittee on Communications &
Technology
Washington, DC 20515

The Honorable Robert E. Latta
Ranking Member
House Committee on Energy & Commerce
Subcommittee on Communications &
Technology
Washington, DC 20515

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

The Honorable Gus M. Bilirakis
Ranking Member
House Committee on Energy & Commerce
Subcommittee on Consumer Protection &
Commerce
Washington, DC 20515

*Re: March 25 Subcommittee Hearing: Disinformation Nation: Social Media's Role in Promoting
Extremism and Misinformation*

Dear Chairs Doyle and Schakowsky and Ranking Members Latta and Bilirakis:

On behalf of the Computer & Communications Industry Association (CCIA),¹ I write to offer some information for consideration in advance of the March 25, 2021 hearing on “Disinformation Nation: Social Media’s Role in Promoting Extremism and Misinformation.”

We understand that during the hearing, Section 230 of the Telecommunications Act may be discussed. This is a critical provision for any website that allows third-party user-generated content. Codified at 47 U.S.C. § 230, Section 230 facilitates legal certainty regarding online commerce and communication, making it possible for millions of entrepreneurs and businesses to flourish. Section 230 also enables the companies we represent to invest substantial time and resources in developing and maintaining content moderation policies that protect consumers and promote free expression.

Digital services are committed to ensuring consumer trust and safety online. As you may be aware, a number of companies recently announced that they have been voluntarily participating in the Digital Trust & Safety Partnership to develop best practices to ensure a safer and more trustworthy Internet.² Responsible services take aggressive steps to moderate harmful content, including extremism and misinformation, with content moderation requiring a mix of automated

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For nearly fifty years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² [Digital Trust & Safety Partnership, https://dtspartnership.org/](https://dtspartnership.org/).

tools and human review. Nothing in the current law prohibits the application of state or federal civil rights law to content that is posted online. A reduction in moderation would lead to an increase in the spread of reprehensible content online, including racism and hate speech, religious and ethnic intolerance, public health-related misinformation, and election-related disinformation by foreign agents.

Services can respond aggressively to this material because they have the legal certainty to do so. What makes this moderation possible is Section 230, including the phrase “otherwise objectionable,” which enables digital services to act regarding speech that is problematic, but still lawful. Congress’s decision to use this term acknowledged that it could not anticipate and legislate every form of problematic online content or behavior. Under a narrower definition, digital services would be discouraged from acting against a considerable amount of potentially harmful but legal content online, lest moderating it lead to litigation.³

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 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, including key consumer protections that users have come to expect, such as spam filtering.

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. Small firms may adopt even more aggressive editorial policies, or decide to exit the market — or never enter it — which would discourage innovation and free expression by all stakeholders. 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.⁴

The U.S. legal framework for online services is critical to American leadership in the digital economy, promoting growth and innovation across sectors. The certainty provided by this framework reduces the threat of costly, likely ruinous litigation, enabling small U.S. businesses and startups to scale up.⁵ Undermining foundational intermediary liability protections could cost an estimated 4.25 million American jobs and \$400 billion over the next decade, according to 2017 research.⁶ Intermediary liability protections also play a key role in enabling American small

³ See Matt Schruers, *What Is Section 230’s “Otherwise Objectionable” Provision?*, Disruptive Competition Project (July 29, 2020), <https://www.project-disco.org/innovation/072920-what-is-section-230s-otherwise-objectionable-provision/> (explaining the contours of “otherwise objectionable”).

⁴ Adi Robertson, *Social justice groups warn Biden against throwing out Section 230*, The Verge (Jan. 27, 2021), <https://theverge.com/2021/1/27/22251093/section-230-civil-rights-groups-letter-biden-harris-congress-defense>.

⁵ Engine, *Section 230: Cost Report* (2019), https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5c8168cae5e5f04b9a30e84e/1551984843007/Engine_Primer_230cost2019.pdf.

⁶ Christian Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections* (NERA 2017), <http://internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>.

businesses to build trust and customer relationships in new markets. Today, millions of U.S. small businesses are taking advantage of online commerce to reach far beyond their localities, including through marketing tools and interactive customer services. However, for these tools to function, companies need legal certainty that they will not be held liable for all communications that arise between businesses and consumers using these tools, or sued for efforts to improve the consumer's experience.

Thank you very much for your thoughtful consideration of these important issues. We look forward to continuing to work with you as Congress considers Section 230.

Sincerely,

Arthur D. Sidney
Vice President of Public Policy
Computer & Communications Industry Association