



Victims of Illicit Drugs

A California Non-Profit Corporation

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House Committee on Energy and Commerce
Sub-Committee on Communications and Technology
U.S. House of Representatives
Washington, D.C.

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairman Doyle, and Ranking Member Latta,

Thank you for convening today's hearing on "[Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity](#)."

We applaud the Committee for its efforts to reform section 230. As has become all too clear, courts' overbroad interpretation of that provision is having the opposite effect Congress intended. Rather than encourage online platforms to protect their users from harmful and illegal activity, section 230 as courts apply it is granting platforms a liability shield even when they fail to adequately wield the content moderation sword.

The large number of bills introduced to reform section 230 shows that Congress sees the need for legislative change. At least one critically important solution has yet to be introduced, however: a bill that restores for platforms the duty of care.¹ That duty ordinarily requires businesses to take reasonable steps to prevent some of their customers from using their services to engage in illegal activity that harms other customers or the public.

Our organizations—Victims of Illicit Drugs and the Alexander Neville Foundation—represent parents who have lost children to the growing epidemic of drugs unlawfully sold over social media. None of the bills under consideration today would address this problem. These children were not killed by misinformation, bias, hate speech, or algorithms. They were killed, in part, because platforms negligently, recklessly, or knowingly facilitated illegal activity: in this case, an unlawful drug sale.

¹See *Hearing on "Disinformation Online and a Country in Crisis,"* before House Subcommittee on Communications and Technology and House Subcommittee on Consumer Protection and Commerce, House Committee on Energy and Commerce, 116th Cong. (2020) ([statement](#) of Neil Fried, Principal, DigitalFrontiers Advocacy); *Hearing on "Fostering a Healthier Internet to Protect Consumers,"* before House Subcommittee on Communications and Technology and House Subcommittee on Consumer Protection and Commerce, House Committee on Energy and Commerce, 116th Cong. (2019) ([statement](#) of Prof. Danielle K. Citron, Boston University School of Law).

As important as examination is of the issues underlying those other bills, only a bill that restores the duty of reasonable care will help stop drug sales and all the other illicit activity online that platforms are doing too little to curb.

Victims and their families could bring any other business to court for such irresponsible conduct. The modest reform we seek simply restores parity and justice in such situations. With its passage, victims and their families will not win every case. But at least they could be heard.

Section 230 today doesn't just deny those victims and their family's access to the courthouse steps. It short circuits the discovery process that is so critical to examining what the platforms know, when they know it, and what they do about it. We are all indebted to Frances Haugen for shedding light on Facebook's reprehensible indifference. But we should not be forced to rely on the next brave whistleblower to pierce platforms' lack of transparency.

The majority of section 230 cases today are dismissed not under section 230, but for failure to state a legally cognizable claim or other procedural defects, according to the Internet Association.² Those cases will still be dismissed at the same early stage. The section 230 reform we seek will just ensure that when victims and their families do have a properly pleaded and plausible claim that they were harmed by platforms' irresponsible behavior, they get their day in court.

That will help not only them. It will also help the public by creating evolving judicial precedent on what steps platforms must take to keep us all safer. And it will better ensure platforms take proactive steps so there are fewer victims, and thus fewer tragic cases that need to be taken to court in the first place.

Thank you for all your effort. We look forward to working with you as the process of section 230 reform moves forward.

Sincerely,

Jaime Puerta, President

Amy Neville, Vice-President and Founder, Alexander Neville Foundation

Steven Filson, Secretary-Treasurer

²See Neil Fried, *Internet Association Makes Case for Section 230 Reform by Mistake*, Aug. 30, 2020, <https://digitalfrontiersadvocacy.com/blogs-and-op-eds/f/ia-study-shows-sec-230-reform-would-have-impact-only-where-needed>.