

November 30, 2021

A Note of Support and Questions for Wednesday's Communications and Technology Subcommittee hearing "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity."

Dear Subcommittee Members,

Online hate is rampant, and platform self-regulation has failed. After years of extraordinary pressure by civil society, social media platforms' content moderation practices have proven to be insufficient, inconsistently implemented, hard to understand, and resistant to independent evaluation. ADL supports reforming Section 230 to hold social media companies accountable when their platforms perpetuate hate, violence, harassment, and extremism that fuel unlawful activity. We deeply appreciate the leadership of this subcommittee to engage in crucial conversations about the best path forward when it comes to Section 230 reform.

Too often social media companies put profit over people, regardless of the harm that results. These companies track virtually everything we do online in order to extract vast amounts of personal information about us and those with whom we associate. They collect this data in order to deploy personalized algorithms that serve up information—all too often disinformation and incendiary hateful content—that most effectively keeps us engaged on their platforms, thus ensuring the collection of more personal data, and keeping us in the crosshairs of targeted advertising. That is the foundation of a deeply toxic business model that monetizes everything about us and our actions and—as part of doing so most effectively—amplifies and promotes hate, harassment, and violent incitement.

As recent revelations about Facebook from documents leaked by whistleblower Frances Haugen illustrate, platforms know a lot about the harmful content on their sites and its impact on vulnerable users but choose not to stop it. Ultimately, the only metrics that matter to social media companies are growth and engagement because those metrics lead to more profit. Relatedly, ADL's latest [report](#) on platform transparency reporting shows these platforms are capable of removing problematic content even though they consistently claim it is too hard given the scale of their operations, and that they are doing their best. In reality, social media companies lack the incentives to meaningfully invest in mitigating harmful content or protecting users.

The goal, then, must be to change the incentives, at least in part. Reforming Section 230 is an important tool in this regard.

ADL welcomes necessary discussions about the best way to amend Section 230, so that the law no longer confers virtually unlimited immunity to platforms that cause serious harm. We think current interpretations of Section 230 are overboard. Platforms should not have wholesale immunity for everything that is produced online—especially for information or online conduct companies create, control or contract. And because Section 230 operates at the stage of litigation before there is discovery, companies are insulated even from limited discovery that might show the true nature of their algorithms

and other business decisions that we now can confirm, as a result of Ms. Haugen's courageous whistleblowing, knowingly allow harm to continue.

[ADL's REPAIR Plan](#) outlines key facets to pushing hate and extremism to the fringes of the digital world. ADL opposes wholesale elimination of Section 230 because we believe that is likely to result in increased hateful content, concentration of power in the largest tech companies, and more unintended consequences to certain communities already targeted by purveyors of hate. Importantly, however, we think careful, yet deeply significant reform is necessary to repair our internet.

Section 230 reform discussions should focus on removing immunity for paid advertising content as well as removing immunity when platform algorithms amplify harmful content that leads to violence, discrimination, and domestic terrorism. We also believe that discussions should carefully consider how Section 230 reform could effectively provide incentives for platforms to take reasonable steps to prevent or address unlawful uses of its services. Finally, reform should consider how to correct for current and overbroad judicial interpretations of the law's application in cases of egregious harm, often involving allegations that are far afield from free speech values.

In anticipation of Wednesday's Communications and Technology Subcommittee hearing, "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity," I wanted to share some questions we thought might be helpful to your preparations. I'm also happy to connect in advance of the hearing to discuss further—please don't hesitate to reach out.

Warmly,
Carmiel Arbit

Questions for Communications and Technology Subcommittee hearing "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity" Wednesday December 1, 2021

- 1. Ms. Haugen**, the Facebook [documents](#) you have provided prove that Facebook had "evidence from a variety of sources that hate speech, divisive political speech and misinformation on Facebook and the family of apps are affecting societies around the world." The document further noted Facebook's "core product mechanics, such as virality, recommendations, and optimizing for engagement, are a significant part of why these types of speech flourish." **Can you explain how these product features contribute to harm both online and offline? How would Section 230 reform help mitigate these issues?**
2. Recent [FBI hate crimes data](#) show that marginalized communities are disproportionately affected by hate and harassment in the physical world. Additionally, according to a [recent ADL survey](#), 1 in 3 individuals harassed online report that they have experienced harassment based on their identity, such as

religion, race, gender or sexual orientation. Clearly, members of vulnerable communities are too often targeted both online and offline. **Mr. Robinson, can you discuss how marginalized communities are disproportionately affected by the lack of action from social media platforms? How will reforming Section 230 help mitigate this threat?**

3. Facebook stated in its rejection of the Wall Street Journal analysis that, on most measures of teen well-being, teens report more positive than negative experiences on Instagram. Yet Facebook also says it has implemented numerous resources and policies related to body image, disordered eating, self harm, and bullying. How serious do you think mental health issues are on Instagram, especially for adolescents? **Mr. Steyer, how would Section 230 reform protect young people from harms caused by social media platforms?**
4. In 2020, ADL, Color of Change, Common Sense, Free Press Action, NAACP, National Hispanic Media Coalition and other organizations were part of the Stop Hate for Profit coalition that called on Facebook advertisers to engage in a month-long advertising pause. Over 1,200 businesses participated. **For Mr. Robinson, Mr. Steyer or Mr. Wood: What's the role of advertising on social media platforms in spreading racism, hate, misinformation and extremist ideologies? How could reforming Section 230 alleviate this problem?**
5. While Section 230 was originally designed and enacted to promote good content moderation, the law has instead swung too far in the opposite direction and has immunized social media platforms (and the rest of the internet ecosystem) from almost all accountability for third-party content, even where platforms and other providers have played an integral role in enabling clearly illegal content on platforms, such as civil rights violations, destabilization of democratic processes, threats or incitement to violence. **Ms. Goldberg, you have litigated Section 230 in the courts. How has the current interpretation of the law influenced your ability to help clients seek access to justice? What changes to Section 230 would best address the needs of the individuals you represent?**
6. Social media is obviously not new, but it is evolving, and the influence of disinformation is clear. We need look no further than the deadly insurrection at our Capitol which civil society organizations like ADL have called "the most predictable terror attack in American history," because it was planned and promoted mainstream platforms such as Facebook, Twitter, Instagram, YouTube, and Reddit, as well as fringe platforms such as Parler, Gab, 4Chan and Telegram. **Ms. Kornbluh, what role are platforms playing in inciting on-the-ground violence? How could changes to Section 230 decrease online and offline violence?**

Additional Questions for E&C Committee staff for hearing "Holding Big Tech Accountable: Targeted Reforms to Tech's Legal Immunity" Wednesday December 1, 2021

1. **Ms. Haugen**, you've noted that one component contributing to the spread of hate, misinformation and incitement on Facebook was generated by a 2018 change the company made to its algorithms, employing "weighting" to favor so-called "meaningful social interactions" (MSI). This change was made to increase engagement, and based on my understanding, continues to favor content that is more likely to be *shared with others* versus content the individual user might find interesting where that content may be less "shareworthy." The problem, however, was that Facebook researchers found that MSI rewarded provocative and negative content of low quality and promoted virality of divisive content. Concerned employees suggested changes that would have countered this, but those were rejected by Facebook. **Based on your experience at Facebook, how difficult is it for the company to meaningfully decrease hate and misinformation by adjusting the weighting of its algorithms? Why won't Facebook make this type of change?**
2. **Mr. Robinson**, some defenders of Section 230 say that changes to the law likely would result in a deluge of frivolous lawsuits against platforms big and small. They say that nonprofit sites like Wikipedia, which is crowd-sourced, could be wiped out if there was no Section 230 protection. Still, many proponents of reform note the importance of litigation to discourage bad actions from corporations and to protect marginalized communities. It's generally accepted that it can be pretty expensive to defend a frivolous lawsuit, even one that gets dismissed pretty early in a case. **Would reforming Section 230 in a way that results in increased lawsuits against all sites that now benefit from its immunity hurt or harm marginalized communities and smaller or nonprofit sites that do good work?**
3. Currently, Section 230 protects online intermediaries like social media platforms from liability for "information" published by a third party, as opposed to "speech." Many proponents of Section 230 reform have criticized overbroad judicial interpretations of the law's application, throwing out cases without any discovery, even where specific facts have been alleged that the platform facilitated or abetted egregious harm, including sexual assault, murder, and terrorism. These cases often involve allegations that seem far afield from free speech values. **Ms. Franks, how should we reform Section 230 to account for the law's current over-interpretation of activity you do not think should be protected? What would be the impact of limiting liability protection to "speech," as opposed to "information"?**

FOLLOW UP: Would reforming Section 230 to explicitly exclude from immunity platforms that exhibit some form of deliberate indifference to unlawful content/conduct impact social media platform operations? Is

“deliberate indifference” the right standard? How would that provide increased protection to targets of online harassment or online harm?

4. **Mr. Wood**, as you know, many of the bills we are considering at today’s hearing focus on holding platforms accountable when they do something more than merely host third-party content; for example, when they algorithmically amplify, spread, and recommend harmful material. My understanding is that your organization, Free Press, supports exploring Section 230 reform centered on “distributor liability,” which seems different from the law applicable even to traditional media. Can you discuss the pros and cons of that approach? How would reform related to distributor liability **serve the broader goal of decreasing harmful and unlawful content online? What unintended consequences should we consider before moving in that direction?**
5. **Ms. Goldberg**, you have extensive experience litigating cases related to online sexual and gender-based harassment and abuse. One concern related to Section 230 reform is that it could result in a stampede of frivolous litigation, as opposed to legitimate cases. **What is the best way to reform Section 230 in order to mitigate the potential deluge of frivolous lawsuits against any and all sites and the communities that depend upon them?**