

**Testimony before the Subcommittee on Technology and Communications
Committee on Energy and Commerce
United States House of Representatives**

Hearing: Legislative Proposal to Sunset Section 230 of the Communications Decency Act

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Good afternoon. Chair Latta, Ranking Member Matsui, thank you for the opportunity to testify. And as a former legislative staffer of this institution, I would like to thank the hard-working congressional staff who undertake critical work on behalf of the American people.

My name is Marc Berkman, and I am the CEO of the Organization for Social Media Safety (OFSMS), the first and leading national, nonpartisan, nonprofit consumer protection organization focused exclusively on social media. OFSMS expresses its sincere appreciation to Chair Latta, Ranking Member Matsui, Chair Rodgers, Ranking Member Pallone, and the other distinguished members of the Committee for your strong bipartisan efforts to protect families from the dangers associated with social media use.

Social Media-Related Harms Are Severe and Pervasive

Today, this Committee explores legislation to sunset Section 230 of the Communications Decency Act of 1996. Chair Rodgers and Ranking Member Pallone offered this proposal because, in their words, “Big Tech companies are exploiting the law to shield them from any

responsibility or accountability as their platforms inflict immense harm on Americans, especially children.”¹

Congress must reconsider the liability frameworks for social media, because the ways in which consumers use the Internet has completely changed since Congress first enacted Section 230 in 1996. Essential to a reasoned analysis of this proposal is a clear, robust overview of the harms that are now either caused or exacerbated by social media. Unfortunately, despite increased press reports and legislative action in this body and throughout the states, public awareness of the harms of social media does not accurately reflect the state of the evidence.

Since 2007, social media use has surged across the world with the number of social media users reaching into the billions in 2024. Among teens, social media use is nearly ubiquitous. Up to 95% of youth ages 13–17 report using a social media platform, with more than a third saying they use social media “almost constantly.”² Further, social media use starts before many children even enter middle school. Nearly 40% of children ages 8 through 12 use social media.³ In our own research, in partnership with the UCLA School of Education and Information Studies and funded by the UCLA Initiative to Study Hate, including over 14,000 teens, a staggering 53% self-reported using social media for more than 5 hours daily.⁴

¹ McMorris Rodgers, C., & Pallone, F. (2024, May 12). *Sunset of section 230 would force Big Tech's hand*. The Wall Street Journal. <https://www.wsj.com/articles/sunset-of-section-230-would-force-big-techs-hand-208f75f1>

² Vogels, E., Gelles-Watnick, R. & Massarat, N. (2022). *Teens, Social Media and Technology 2022*. Pew Research Center: Internet, Science & Tech. United States of America. Retrieved from <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>

³ Rideout, V., Peebles, A., Mann, S., & Robb, M. B. (2022). *Common Sense Census: Media use by tweens and teens, 2021*. San Francisco, CA: Common Sense. Retrieved from https://www.common sense media.org/sites/default/files/research/report/818-census-integrated-report-final-web_0.pdf

⁴ Ong, C., & Krongard, S. (2024). "I'm not gonna let them win" - An ongoing exploration of youth encounters with hate speech and cyberbullying on social media. In *INTED2024 Proceedings* (pp. 7070-7075). IATED. <https://library.iated.org/view/ONG2024IMN>

With this mass adoption of social media, numerous, serious social media-related dangers have emerged. Current research shows, empirically, that social media is harming millions of American children:

- **Cyberbullying:** About 46% of students report experiencing cyberbullying.⁵ Cyberbullying victims are about **2.5 times more likely to attempt suicide**.⁶
- **Self-Harm:** According to one study, about 43% of young adults had seen self-harm content on Instagram. About 32.5% indicated that they had performed the same or similar self-harming behavior as a consequence.⁷
- **Disordered Eating:** According to one study, new TikTok accounts set up by a 13-year-old were recommended self-harm and eating disorder content within minutes of scrolling the app's For You feed. Eating disorder-related content was recommended within 8 minutes.⁸
- **Sexting:** About 20% of teens have sent or received a nude or semi-nude photo or video of themselves with high rates of reported pressure and coercion.⁹

⁵ Vogels, E. A. (2022, December 15). *Teens and cyberbullying 2022*. Pew Research Center. <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>

⁶ John, A., Glendenning, A.C., Marchant, A., Montgomery, P., Stewart, A., Wood, S., Lloyd, K. and Hawton, K., (2018). Self-harm, suicidal behaviours, and cyberbullying in children and young people: Systematic review. *Journal of medical internet research*, 20(4), e9044.

⁷ Effects of exposure to self-harm on social media: Evidence from a two-wave panel study among young adults - Florian Arendt, Sebastian Scherr, Daniel Romer, 2019. (n.d.). <https://journals.sagepub.com/doi/full/10.1177/1461444819850106>

⁸ Deadly by design. (December 2022). https://counterhate.com/wp-content/uploads/2022/12/CCDH-Deadly-by-Design_120922.pdf

⁹ S., P. J. (n.d.). *The nature and extent of sexting among a national sample of Middle and high school students in the U.S.* Archives of sexual behavior. <https://pubmed.ncbi.nlm.nih.gov/31309428/>

- **Drug Trafficking:** One in four young people see illicit drugs advertised for sale on social media.¹⁰
- **Sextortion and Sexual Exploitation:** Approximately 5% of middle and high school students reported that they had been the victim of sextortion.¹¹
The National Center for Missing and Exploited Children reported a 323% increase in online enticement reports between 2021 and 2023.¹² From October 2021 to March 2023, the FBI reported 12,600 sextortion victims at least 20 of whom died by suicide.
- **Human Trafficking:** Many child trafficking and sex crimes now originate from social media sites where predators gain knowledge of their victims' likes and habits.¹³

These studies, among many others, indicate real, ongoing harm from social media. Anecdotal cases of ongoing risks are also themselves dispositive. Here are just a few illustrative examples of social media-related tragedies. Unfortunately, we hear stories such as these echoed in our visits to Congressional offices and our work in K-12 schools across the country:

- After suffering severe cyberbullying over social media, Nate Bronstein, forever 15, died by suicide.¹⁴

¹⁰ McCulloch, L., & Furlong, S. (2019). DM for details. Selling drugs in the age of social media. London: Volteface. <https://www.drugsandalcohol.ie/31036/>

¹¹ Patchin, J. W., & Hinduja, S. (2020). Sextortion among adolescents: Results from a national survey of US youth. *Sexual Abuse*, 32(1), 30-54. <https://journals.sagepub.com/doi/10.1177/1079063218800469>

¹² *Sextortion*. National Center for Missing & Exploited Children. (n.d.). <https://www.missingkids.org/theissues/sextortion>

¹³ *Traffickers use the internet*. (2020, January). Global report of trafficking in persons, 2020. United Nations Publication. https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_Chapter5.pdf

¹⁴ *About Nate Bronstein*. Buckets Over Bullying. (2023, June 23). <https://bucketsoverbullying.org/nates-story/>

- Sammy Chapman, forever 16, died after ingesting Fentanyl-poisoned drugs that he easily acquired from a drug dealer operating on social media.¹⁵
- A boy from the United Kingdom, forever 11, died just a few weeks ago after imitating a dangerous challenge he saw on social media.¹⁶
- Becca Schmill, forever 15, was raped by a boy she met on social media. Cyberbullying followed. To cope, Becca started self-medicating with drugs purchased over social media which tragically were Fentanyl poisoned.¹⁷

In addition, to the clear quantitative and qualitative evidence of ongoing social media-related harms, many studies suggest a strong link between social media use and negative mental health outcomes, especially among adolescents. The Surgeon General issued a public health advisory on social media and youth mental health on May 23, 2023.¹⁸ The advisory accurately provides a compelling overview of the available research, including the following highlights:

- A longitudinal cohort study of U.S. adolescents aged 12–15 that adjusted for baseline mental health status found that adolescents who spent more than 3 hours per day on social media faced double the risk of experiencing poor mental health outcomes including symptoms of depression and anxiety.¹⁹

¹⁵ TodayShow. (2021, March 21). *Dad of teen who overdosed with drugs from Snapchat recalls moment he discovered son*. TODAY.com. <https://www.today.com/health/dr-laura-berman-s-husband-recalls-finding-teenage-son-after-t212415>

¹⁶ Mulla, Y. (2024, March 12). *Lancaster: Inquest into “social media craze” death of boy opens*. BBC News. <https://www.bbc.com/news/uk-england-lancashire-68543644>

¹⁷ Becca Schmill Foundation. (n.d.). <https://beccaschmillfdn.org/>

¹⁸ Social Media and Youth Mental Health. (2023, May 23). <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>

¹⁹ Riehm, K. E., Feder, K. A., Tormohlen, K. N., Crum, R. M., Young, A. S., Green, K. M., Pacek, L. R., La Flair, L. N., & Mojtabai, R. (2019). Associations Between Time Spent Using Social Media and Internalizing and

- A study conducted among 14-year-olds found that greater social media use predicted poor sleep, online harassment, poor body image, low self-esteem, and higher depressive symptom scores with a larger association for girls than boys.²⁰
- A synthesis of 20 studies demonstrated a significant relationship between social media use and body image concerns and eating disorders, with social comparison as a potential contributing factor.²¹
- A longitudinal prospective study of adolescents without ADHD symptoms at the beginning of the study found that, over a 2-year follow-up, high-frequency use of digital media, with social media as one of the most common activities, was associated with a modest yet statistically significant increased odds of developing ADHD symptoms.²²

The Social Media Industry Concedes the Significant Harms Caused by Their Platforms

Given the data, no ambiguity remains concerning the harms caused or exacerbated by social media use. Even social media executives themselves have, here in Congress, readily acknowledged the vast safety concerns:

Externalizing Problems Among US Youth. *JAMA psychiatry*, 76(12), 1266–1273. <https://doi.org/10.1001/jamapsychiatry.2019.2325>

²⁰ . Kelly, Y., Zilanawala, A., Booker, C., & Sacker, A. (2019). Social Media Use and Adolescent Mental Health: Findings From the UK Millennium Cohort Study. *EClinicalMedicine*, 6, 59–68. <https://doi.org/10.1016/j.eclinm.2018.12.005>

²¹ Holland, G., & Tiggemann, M. (2016). A systematic review of the impact of the use of social networking sites on body image and disordered eating outcomes. *Body image*, 17, 100–110. <https://doi.org/10.1016/j.bodyim.2016.02.008>

²² Ra, C. K., Cho, J., Stone, M. D., De La Cerda, J., Goldenson, N. I., Moroney, E., Tung, I., Lee, S. S., & Leventhal, A. M. (2018). Association of Digital Media Use With Subsequent Symptoms of Attention-Deficit/Hyperactivity Disorder Among Adolescents. *JAMA*, 320(3), 255–263. <https://doi.org/10.1001/jama.2018.8931>

- Mark Zuckerberg of Meta, acknowledged among other lapses that Meta, then Facebook, “didn’t do enough to prevent these tools from being used for harm,” including a failure to protect data privacy.²³
- Shou Zi Chew of TikTok, stated that the “security, privacy, and content manipulation concerns raised about TikTok are really not unique to us. The same issues apply to the other companies.”²⁴
- Jennifer Stout, VP of Global Policy with Snapchat, said “We have stepped up and have deployed proactive detection measures to get ahead of what the drug dealers are doing. They are constantly evading our tactics, not just on Snapchat but on every platform.”²⁵
- And under questioning from Senator Durbin about ongoing issues with grooming, child sexual abuse material, and sextortion, Discord CEO Jason Citron said, “This is an ongoing challenge for all of us.”²⁶

Despite the clear consensus among its leadership that severe safety risks to adolescents pervade the social media industry, the platforms are not taking sufficient action. The platforms launch new safety initiatives with significant press outreach, yet often such initiatives show either disappointing results, lack of adoption, or both. For example, only about 1% of Snapchat’s 20 million teenaged users’ parents use the available parent safety suite of features, otherwise known

²³ Zuckerberg, M. (2018, April 11). *Testimony of Mark Zuckerberg, Chairman and Chief Executive Officer, Facebook*. Hearing before the United States House of Representatives Committee on Energy and Commerce.

²⁴ Chew, S. (2023, March 23). *Testimony of Shou Chew, Chief Executive Officer, TikTok Inc.* Testimony before the U.S. House Committee on Energy and Commerce.

²⁵ U.S. Senate Committee on Commerce, Science, and Transportation. (2021, October). *Protecting Kids Online: Snapchat, TikTok, and YouTube*.

²⁶ Citron, J. (2024, January 31). *Testimony before the United States Senate Committee on the Judiciary: Big Tech and the Online Child Sexual Exploitation Crisis*. U.S. Senate Committee on the Judiciary.

as Family Center.²⁷ Likewise, social media executives, in front of Congress, will deploy talking points such as “industry leading efforts” and “proactive detection measures”. Yet, tragically, the bar is so low to lead the industry in safety measures, these efforts have had minimal impact on the only metric that truly matters, the number of users harmed. That number has seemingly only increased over time.

Chair Rodgers and Ranking Member Pallone’s Section 230 Sunset Plan Is the Correct Legislative Response

Because of the unambiguous pervasive nature of the harms related to social media use and the failure of the industry to address such harm, we stand in support of the Chair and Ranking Member’s Section 230 sunset discussion draft. Section 230(c) has directly facilitated these harms by gutting our carefully developed tort law jurisprudence for the social media industry. This is the basic public policy mechanism that forces companies to appropriately consider public safety along with their profit motives when making business decisions. The results speak for themselves.

We appreciate Committee leadership for considering a suite of reforms to improve social media safety and privacy, including the American Privacy Rights Act (APRA) discussion draft, the Kids Online Safety Act (KOSA) (H.R. 7891/S. 1409), the Children and Teens’ Online Privacy Protection Act (“COPPA 2.0”) (H.R. 7890/ S. 1628), and Sammy’s Law (H.R. 5778). This

²⁷ Malik, A. (2024, February 6). *Snap CEO says 20 million US teens use Snapchat, but only 200,000 parents use its family center controls*. TechCrunch. <https://techcrunch.com/2024/01/31/snap-ceo-says-20-million-u-s-teens-use-snapchat-but-only-200000-parents-use-its-family-center-controls/>

consideration proceeds with the understanding that the social media industry is a vital stakeholder in these policy discussions regarding the overall regulatory framework needed for consumer safety and privacy. But given the industry's long-standing reluctance to meaningfully participate in public policy discussions, we believe that Chair Rodgers and Ranking Member Pallone's discussion draft legislation is a necessary tool to encourage the leadership of the social media industry to finally offer real impactful solutions and compromises. If they want a more tailored, nuanced policy framework versus a full repeal of Section 230, then they will need to come prepared to discuss real reforms.

Every day without comprehensive social media safety and privacy reform results in more children being harmed. We need to sunset this broken regulatory system today and start working.

Section 230 Was Never Just About Civil Liability Immunity

A fair discussion of Section 230 should also include its tragically forgotten provisions, especially Sections 230(d). Congress only granted the civil liability immunity provisions of Section 230(c) with the clear legislative intent to also ensure for the supply and provision of critical third-party safety tools to families.

Congress wanted to empower American families to use technology to make their own choices about the content they see. If you look at the conference report from 1996, Section 230

is discussed under the heading, “SEC. 509. ONLINE FAMILY EMPOWERMENT.”²⁸ Further, the second subsection granting the liability shield at Section 230(c)(2)(B) states, “No provider or user of an interactive computer service shall be held liable on account of any action taken to enable or make available to information content providers or others the technical means to restrict access to material” provided by another content provider.

Several provisions in the findings and policy sections of Section 230 point to the importance of empowering families to use technology to guard against harmful content while fostering robust, open, and free speech online. According to the findings, “These services offer users a great degree of control over the information they receive, as well as the potential for even greater control in the future as technology develops. And, later, it is the policy of the United States to “encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.”²⁹ And it is the policy of the United States “to remove disincentives for the development and utilization of blocking and filtering technologies. that empower parents to restrict their children’s access to objectionable or inappropriate online material”³⁰

Notification to consumers regarding third-party safety software is also required by Section 230. Section 230(d) states that platforms, “shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the

²⁸ U.S. House. *Telecommunications Act of 1996, Conference Report* (to accompany S. 652) (102 H. Rpt. 458) <https://www.congress.gov/104/crpt/hrpt458/CRPT-104hrpt458.pdf>

²⁹ 47 USC 230(b)(3)

³⁰ 47 USC 230(b)(4)

provider, *notify such customer that parental control protections are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.*” (Emphasis added).

Based on the legislative history, in 1996, and upon the addition of subsection (d) in 1998, Congress believed that parents and caregivers would have access to third-party safety software to protect their children from the harms of the Internet. Unfortunately, the social media platforms, while taking full advantage of the civil liability immunity provisions of Section 230(c) have substantially hindered the original vision of Section 230. The major social media platforms, to our knowledge, have consistently violated the clear legal requirements of Section 230(d).

Also, Congress could not have envisioned 30 years ago that today’s social media platforms would have to provide some level of assistance to third-party safety software providers for their products to effectively function. Unfortunately, several major platforms do not provide access to consumers who want to use third-party safety software even though the burden on the platforms of providing access is negligible and can be done securely using existing, industry-standardized technology. Importantly, Section 230 contemplated and incentivized the development of *both* robust exchange of ideas and commercial innovation *and* technologies to empower families to protect themselves from harmful content. To protect our children, families should have a choice about whether they want to use third-party safety software, not the social media platforms. Unfortunately, today, the tragic disregard of this essential pillar of Section 230 has likely led to the avoidable harm of millions of children.

That is why along with the other essential pieces of legislation that this Committee is considering, such as APRA, COPPA 2.0, and KOSA, Congress must pass Sammy's Law to restore this balance and give families the choice of using safety software to protect their children. Passing Chair Rodgers' and Ranking Member Pallone's proposed legislation to sunset Section 230 will provide the necessary facilitation and expedition of this policymaking process, ultimately repairing our outdated regulatory framework and saving countless lives.

About the Organization for Social Media Safety

Through education, advocacy, and technology, the Organization for Social Media Safety (OFSMS) protects against all social media-related dangers, including cyberbullying, human trafficking, suicide, eating disorders, anxiety, sexual predation, and drug trafficking, among others.

OFSMS provides educational services to K-12 schools across the United States teaching students, parents, and educators essential social media safety skills. OFSMS, in partnership with UCLA's School of Education and Information Services, conducts groundbreaking research into the impact of social media on America's students and schools. OFSMS works with legislators in Congress and across the country on a nonpartisan basis to improve public policy relating to social media safety. And OFSMS improves technology that provides real-time protection against any social media-related harms.