



June 24, 2020

The Honorable Michael Doyle
Chairman, Subcommittee on Communications
and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jan Schakowsky
Chair, Subcommittee on Consumer Protection
and Commerce
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Cathy McMorris Rodgers
Ranking Member, Subcommittee on
Consumer Protection and Commerce
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: Joint Hearing on “A Country in Crisis: How Disinformation Online Is Dividing the Nation”

Dear Chairman Doyle, Chair Schakowsky, Ranking Member Latta, and Ranking Member McMorris Rodgers:

Consumer Reports (CR) welcomes today’s joint hearing which will examine how online platforms and social media networks spread false, misleading, and in many cases, dangerous information related to the twin crises of the COVID-19 pandemic and the nationwide social unrest in response to a Minneapolis police officer’s horrific killing of George Floyd last month, the latest incident of inexcusable police brutality directed at Black Americans.

The Consumer Protection Subcommittee hearing (“Buyer Beware: Fake and Unsafe Products on Online Marketplaces”) held earlier this year, at which CR testified, touched upon some of the difficult challenges caused by online disinformation.¹ The intervening three months have brought those issues into even sharper relief, and made it clear that more can and should be done to mitigate the damage caused by a lack of platform accountability.

¹ CR’s March 4, 2020 testimony is available online here: <https://advocacy.consumerreports.org/research/testimony-of-david-friedman-vice-president-advocacy-consumer-reports-for-u-s-house-hearing-on-fake-and-unsafe-products-on-online-marketplaces/>.

On a related note, CR submitted comments to the Federal Trade Commission (FTC) earlier this week on the need to update and more aggressively enforce its Endorsement Guides to address widespread fake reviews and deceptive influencer marketing tactics.² These comments document how commercial disinformation evolves and thrives, and how platforms and regulators have not acted strongly enough to address the problem.

And though the Subcommittee’s March hearing (and CR’s testimony) focused more on e-commerce, the observation that the current state of the internet is a stark departure from its original, idealistic vision—where anyone, anywhere in the world could access all the world’s knowledge with a click—remains plainly relevant when considering disinformation. *Washington Post* columnist Robert J. Samuelson echoed this sentiment last month:

We are a long way from the Internet’s innocent early years, when it was celebrated as a glorious vehicle for promoting democratic values and personal self-expression. Instead, it has developed a split personality: on the one hand, an astonishing source of information, entertainment and communications; on the other, a terrifying instrument of war, crime and the loss of personal privacy. A central question of our time is whether we can continue enjoying the Good Internet while suppressing the Bad Internet.³

Unfortunately, in the face of today’s crises, internet users face a far grittier version of the web—Samuelson’s “Bad Internet”—where disinformation can both foment violence and promote dangerous false cures that may result in harm, even death.

As CR stated in March, the solutions to this multidimensional problem should be inspired by a return to the original promise of an open internet where innovation, competition, and transparency thrive. Today’s joint hearing can help highlight solutions to one of the main roots of the problem the Subcommittees seek to address: a lack of online platform accountability. Doing so will take the combined efforts of Congress, federal agencies, and their state and local counterparts, in addition to much more serious efforts by online vendors and networks to police and regulate their platforms.

First, any conversation regarding platform accountability inevitably includes a discussion of Section 230 of the Communications Decency Act, which was created to broadly insulate online platforms from being treated as publishers, insofar as an offline publication is subject to liability for the content it distributes. While CR does not support the wholesale repeal of Section 230, it is

² CR’s June 22, 2020 comments to the FTC can be found online here: <https://advocacy.consumerreports.org/wp-content/uploads/2020/06/CR-Comments-on-FTC-Endorsement-Guides-.pdf>.

³ Robert J. Samuelson, “Dealing with the Internet’s Split Personality” *Washington Post* (May 31, 2020), https://www.washingtonpost.com/opinions/there-must-be-a-price-to-pay-for-misusing-the-internet/2020/05/29/fc82b08e-a1b8-11ea-81bb-c2f70f01034b_story.html.

clearly time to reexamine its limits. Second, government agencies need to be strengthened to better confront the challenge of online disinformation. Relevant agencies, be it the FDA or the FTC, need to be sufficiently resourced, in terms of personnel, budget, technical expertise and enhanced penalty authority to carry out this critical work.

Section 230 became law nearly a quarter-century ago, just as many of today's online platforms were being created and long before they had reached the volume and economic impact they possess today. CR does not support efforts to remove Section 230 liability protections when platforms, such as Twitter, attempt to monitor and flag content on their platforms that violates their terms of service because it incites violence or is known to be false. Indeed, online platforms should strive to more effectively and transparently moderate the content on their platforms to prevent harm. But enabled by a Section 230 immunity that fails to adequately incentivize acting to protect their users, online platforms have been too slow to react to abuses of their systems for far too long. The present state of Section 230 immunity leaves them without enough reason to act to protect their users.

Therefore, Congress should very carefully consider proposals to give platforms more legal incentive to police and respond to abuse, including incurring liability when they are, or should be, reasonably aware of dangerous products or illegal behavior on their platforms. The Federal Trade Commission has enforced Section 5 of the FTC Act to require companies to take reasonable steps to safeguard their systems from outside hackers. Perhaps this duty of reasonable care should be extended to protect platform users from other abuse such as harassment and misinformation.⁴ Congress should also consider measures to ensure that platforms have a reasonable duty to proactively search for and deter abuses. Of course, given the protections afforded by the First Amendment, which CR naturally and strongly supports, policing disinformation is a trickier task, as many appropriately fear the negative consequences of over-moderation or outright blocking.

For our own part, Consumer Reports has published several articles and investigative reports on bogus coronavirus claims and false cures since the pandemic erupted in March. Examples include:

- An investigation of how a company, the Genesis II Church of Health and Healing (though not recognized as a religious establishment), was able to continue to sell its “Miracle Mineral Solution” or MMS (which includes sodium chlorite, a substance used in disinfectants) for years, despite the U.S. Food and Drug Administration's

⁴ CR's June 22, 2020 comments to the FTC can be found online here: <https://advocacy.consumerreports.org/wp-content/uploads/2020/06/CR-Comments-on-FTC-Endorsement-Guides-.pdf>.

episodic and ineffective attempts to warn consumers and stop the sale of the product; in the wake of Genesis promoting MMS as a cure for COVID-19, the FDA filed a lawsuit in April to bar the sale of the product.⁵

- A mobilization action asking consumers to report to CR false cures and other coronavirus-related scams they discover online. To date, CR has received dozens of responses from consumers identifying false cures (immunity oils, UV-wands, and other natural remedies) for COVID-19, faulty or fake facemasks, or reports of orders never received after weeks of waiting.⁶
- An article highlighting the FDA’s attempts to stop televangelist Jim Bakker from promoting and selling “Silver Solution” (priced at \$300) as a cure “within 12 hours” for the novel coronavirus, and the failure of Amazon to bar the sale of questionable COVID-19 products, despite assurances from the online platform that it would rid products making “false claims” from its website.⁷
- A report that described how a CR journalist created seven paid ads that intentionally violated Facebook’s pledge to not allow COVID-19 ads on its platform that encouraged people to drink bleach or ignore social distancing guidelines. Sadly, all seven ads which included claims that “coronavirus is a HOAX” or to “stay healthy with SMALL daily doses” of bleach were approved. CR pulled the ads before they were published by Facebook and viewed by the public.⁸

Our work makes clear the challenge that confronts policymakers and the public at-large when it comes to figuring out how best to ensure powerful online platforms do not promote or give voice to patently false claims, conspiracy theories, and potentially dangerous “cures” in the midst of a worldwide pandemic. A similarly ugly stream of falsehoods and racist vitriol spread online as demonstrators took to the streets to protest against police brutality that led to the death

⁵ Ryan Felton, “Why Did It Take a Pandemic for the FDA to Crack Down on a Bogus Bleach 'Miracle' Cure?” Consumer Reports (May 14, 2020), <https://www.consumerreports.org/scams-fraud/bogus-bleach-miracle-cure-fda-crackdown-miracle-mineral-solution-genesis-ii-church/>.

⁶ Ryan Felton, “Tell Consumer Reports If You've Seen a Product with a Bogus Coronavirus Claim” Consumer Reports (March 18, 2020), <https://www.consumerreports.org/scams-fraud/report-products-with-a-bogus-coronavirus-claim/>.

⁷ Ryan Felton, “Beware of Products Touting False Coronavirus Claims” Consumer Reports (March 9, 2020), <https://www.consumerreports.org/coronavirus/beware-of-products-touting-fake-covid-19-coronavirus-claims/>. The article highlighted: “...a spot check by CR uncovered a number of questionable products with claims that they help fight and even prevent COVID-19. A brimmed hat with an ‘anti-COVID-19 all-purpose face protecting shield’ was available for \$40. A ‘COVID-19 protective hat for women’ could be purchased for \$6. And if you happened to search for ‘COVID-19,’ listings for multivitamins and a wide array of e-books on the topic popped up.”

⁸ Kaveh Waddell, “Facebook Approved Ads with Coronavirus Misinformation” Consumer Reports (April 7, 2020), <https://www.consumerreports.org/social-media/facebook-approved-ads-with-coronavirus-misinformation/>.

of George Floyd. In both of these instances and several others, online platforms must do a better job to moderate their sites than they currently are.

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Americans need relief from disinformation-filled online platforms that have strayed far from the internet’s founding vision. We look forward to working with both the Communications and Technology Subcommittee and the Consumer Protection Subcommittee, colleague organizations, and industry to implement the solutions as they are adopted and to develop other novel approaches to mitigate the harm of online disinformation. In the meantime, CR will continue to expose dangerous products, counterfeits, fake reviews, and harmful disinformation online, and we will innovate and expand our work with consumers and partners towards a fair, safe, transparent, and more racially just online ecosystem—one that we can sincerely trust to provide accurate and accessible information, offer real choices, and fundamentally deliver what it promises.

Thank you for considering CR’s views and allowing us to participate in the ongoing debate over how best to combat online disinformation that is harming our public discourse.

Sincerely,



Jonathan Schwantes
Senior Policy Counsel



Laurel Lehman
Policy Analyst

cc. Members of the House Energy and Commerce Committee