

March 27, 2023

RE: Do Not Amend or Repeal Section 230

Rep. Cathy McMorris Rodgers
Chair, House Committee on Energy and Commerce
2188 Rayburn House Office Building
Washington, D.C. 20515

Rep. Frank Pallone
Ranking Member, House Committee on Energy and Commerce
2107 Rayburn House Office Building
Washington, D.C. 20515

Rep. Bob Latta
Chair, Subcommittee on Communications and Technology
2467 Rayburn House Office Building
Washington, D.C. 20515

Rep. Doris Matsui
Ranking Member, Subcommittee on Communications and Technology
2311 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair McMorris Rodgers, Ranking Member Pallone, Chair Latta,
and Ranking Member Matsui:

The American Civil Liberties Union (ACLU) urges you to protect Section 230 from amendment or repeal. The ACLU has long supported maintaining Section 230 of the Communications Act in order to promote freedom of speech and expression. Section 230 has been one of the key factors enabling the robust expansion of internet-based speech — including artistic expression and political organizing.

Section 230 provides that platforms shall not be treated as the publisher or speaker of content provided by third parties, and shall not be liable for good faith efforts to remove certain types of objectionable content. Taken together, this section has created the internet as we know it. Platforms are able to moderate the content that third parties post on their websites, but need not be overly restrictive for fear of liability.

Section 230 Enables the Public's Free Speech

If it were not for Section 230, websites would refuse to host user-generated content because doing so would open them up to be investigated, shut down, sued, or charged with a crime over one user's speech. Without user-generated content, the only content available online would be provided by website owners. The internet would cease



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to be a place for political organizing, opinion sharing, and community building. Websites like Yelp, Craigslist, and Twitter could be shut down.

Section 230 Enables Platforms to Take Down Objectionable Content

Some members of Congress lament the existence of misinformation or hateful speech on platforms. Although the ACLU recognizes that this speech is protected from *government* interference, and we encourage platforms not to censor lawful speech, Section 230 explicitly protects a platform's right to good faith content moderation. Thus, the law currently *encourages* platforms to regulate any content that they find objectionable, without fear of being held liable for making a mistake.

Additionally, the First Amendment enables platforms to remove objectionable content. Platforms are entitled to their own free speech rights — and thus can decide what should and should not appear on their websites. Section 230 simply provides an additional layer of protection.

Section 230 Does Not Interfere with the Prosecution of Federal Crimes, Illegal Discrimination, or the Platform's Own Illegal Conduct

Some efforts to amend or repeal Section 230 are driven by a desire to take away “blanket immunity” for illegal content on platforms. However, Section 230 does not grant blanket immunity to platforms or their users. First and foremost, individuals can still be held liable for the illegal content they post online — Section 230 only prevents *platforms* from being liable whenever one of their users breaks the law.

Moreover, Section 230 does not protect the platform from all liability. For example, platforms can still be held liable for their own speech and content. If Facebook profiles its users on the basis of protected characteristics, and excludes users from economic opportunities on the basis of those characteristics, it could be held liable under civil rights law. Moreover, the law explicitly states that platforms can be prosecuted for federal crimes or for violating intellectual property law.¹

Enabling platforms to host third-party content without incurring liability is critical for free speech and for maintaining the internet as we know it. The ACLU strongly urges you to oppose any efforts to amend or repeal Section 230 of the Communications Act. If you have any questions, please do not hesitate to contact Jenna Leventoff at jleventoff@aclu.org. Thank you for your attention to these concerns.

Sincerely,



Christopher Anders
Federal Policy Director



Jenna Leventoff
Senior Policy Counsel

¹ 47 U.S.C § 230 (e)(1) - (e)(2)