

10.17.2022 SHOW NOTES:

Social Media and the ‘Slippery Slope’

47 U.S. Code § 230 - Protection for private blocking and screening of offensive material

(a) Findings The Congress finds the following:

(1)

The rapidly developing array of [Internet](#) and other [interactive computer services](#) available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2)

These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3)

The [Internet](#) and other [interactive computer services](#) offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4)

The [Internet](#) and other [interactive computer services](#) have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5)

Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) PolicyIt is the policy of the [United States](#)—

(1)

to promote the continued development of the [Internet](#) and other [interactive computer services](#) and other interactive media;

(2)

to preserve the vibrant and competitive free market that presently exists for the [Internet](#) and other [interactive computer services](#), unfettered by Federal or [State](#) regulation;

(3)

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](#);

(4)

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; and

(5)

to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an [interactive computer service](#) shall be treated as the publisher or speaker of any information provided by another [information content provider](#).

(2) Civil liability

No provider or user of an [interactive computer service](#) shall be held liable on account of—

(A)

any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B)

any action taken to enable or make available to [information content providers](#) or others the technical means to restrict access to material described in paragraph

(1).[\[1\]](#)

(d) [Obligations of interactive computer service](#)

A provider of [interactive computer service](#) 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 provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) 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.

(e) Effect on other laws

(1) [No effect on criminal law](#)

Nothing in this section shall be construed to impair the enforcement of section [223](#) or [231](#) of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) [No effect on intellectual property law](#)

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any [State](#) from enforcing any [State](#) law that is consistent with this section. [No cause of action may be brought and no liability may be imposed under any \[State\]\(#\) or local law that is inconsistent with this section.](#)

(4) [No effect on communications privacy law](#)

Nothing in this section shall be construed to limit the application of the [Electronic Communications Privacy Act of 1986](#) or any of the amendments made by such Act, or any similar [State](#) law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A)

any claim in a civil action brought under [section 1595 of title 18](#), if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B)

any charge in a criminal prosecution brought under [State](#) law if the conduct underlying the charge would constitute a violation of [section 1591 of title 18](#); or

(C)

any charge in a criminal prosecution brought under [State](#) law if the conduct underlying the charge would constitute a violation of [section 2421A of title 18](#), and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "[Internet](#)" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "[interactive computer service](#)" means any [information service](#), system, or [access software provider](#) that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the [Internet](#) and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term “[information content provider](#)” means any [person](#) or entity that is responsible, in whole or in part, for the creation or development of information provided through the [Internet](#) or any other [interactive computer service](#).

(4) Access software provider The term “[access software provider](#)” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A)

filter, screen, allow, or disallow content;

(B)

pick, choose, analyze, or digest content; or

(C)

transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, § 230, as added [Pub. L. 104–104, title V, § 509](#), Feb. 8, 1996, [110 Stat. 137](#); amended [Pub. L. 105–277, div. C, title XIV, § 1404\(a\)](#), Oct. 21, 1998, [112 Stat. 2681–739](#); [Pub. L. 115–164, § 4\(a\)](#), Apr. 11, 2018, [132 Stat. 1254](#).)

The 'End-of-the-Internet' Rhetoric Surrounding Section 230 Is Way Overblown

By [Alex Deise](#)

(AP Photo/Tony Avelar)

Last week, the Supreme Court (Court) agreed to hear two cases concerning the correct statutory interpretation of [47 U.S.C. §230](#) (Section 230). In response, Big Tech platforms (platforms), their sympathizers, and some in the media asserted outright falsehoods like the Court could “overturn” Section 230 and these cases could end the internet. Much of what you’ve heard about these cases is likely wrong, and intentionally so. The record needs to be straightened out.

First, the Court has *never* interpreted Section 230. In the 26 years since the law’s enactment, the only justice to go on record questioning how lower courts have expanded the statute’s immunity is Justice Thomas. See [Malwarebytes, Inc. v. Enigma Software Group](#) (2020). Second, the Court is *not* being asked to “overturn” Section 230. These cases are *not* about the constitutionality of the law, but the correct interpretation of it. In these cases, the Court “interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment.” See [Bostock v. Clayton County](#) (2020) at 4. Here, we are concerned with what the statutory terms meant in 1996.

In cases over statutory interpretation, the text is often the beginning and end point. §230(c)(1) provides, “[n]o provider...of an interactive computer service shall be treated as *the publisher*... of any information provided by another information content provider.” For platforms to receive immunity, they must show the plaintiff’s claim (1) treats them like a publisher and (2) the information at issue does not belong to them. Instead of reading the statute, some argue Congress’s overarching purpose was to provide broad immunity. While the congressional debates say nothing like that, the current textualist Court is unlikely to agree with those arguments anyway.

The facts in [Gonzalez v. Google](#) and [Twitter v. Taamneh](#) are horrific. Parents of children killed in ISIS terrorist attacks sued Google (YouTube), Facebook, and Twitter under a civil terrorism statute alleging that the platforms aided ISIS by knowingly recommending their content through their algorithms. Thus, the broad question in these cases is whether Section 230 immunizes platforms when they make targeted recommendations. But the specific textual question is whether claims that go after platforms for their targeted recommendations treat them like a publisher as that term was understood in 1996.

In 2018, the U.S. Court of Appeals for the 2nd Circuit decided a case with very similar facts to *Gonzalez* and *Taamneh* in [Force v. Facebook](#). While the majority held Facebook's content suggestion algorithm received immunity under Section 230, then-Chief Judge Katzmann's dissent argued it did not because it was not a publishing function. This was because Facebook's algorithm was its own message, and it created networks of people. Facebook took information about users from their prior Facebook activity, affirmatively told them what else they might like and suggested it to them, and created connections of people on Facebook and in the world as a result. Facebook's actions were markedly different from traditional publishing functions—as understood in 1996 and protected under Section 230—like decisions to post, take down, or edit content. The dissent was also favorably cited in Justice Thomas's statement in *Malwarebytes* (see pages 8-9) and might be where several of the justices end up in the cases.

The unhinged rhetoric that if the platforms lose, the internet is over or it takes us back to a pre-Section 230 internet, comes from people that know their claims are false. If the platforms lose because targeted recommendations are *not* protected by Section 230, the First Amendment will immunize their actions in almost every case. In the small subset of cases where it doesn't, the plaintiff still needs to prove the platforms violated every element of the claim by a preponderance of the evidence (more than 50%). In some cases, the platforms might not have violated the statute. And in cases where the First Amendment does not immunize their actions, platforms can adjust their algorithm to prevent those recommendations.

If the Court holds that a platforms' targeted recommendations are not immunized under Section 230, it does not make them liable for simply hosting content. The publishing functions as understood in 1996 are still protected. The rhetoric about these cases is intentionally overblown; all these cases ask the Court to do is finally interpret Section 230 since its codification 26 years ago.

Thinking Clearly & Speaking Freely: Shining a Spotlight On Big Tech's Section 230 Immunity

By [Randolph May](#)

[Sigmund](#)

In this Part 12 of my series, "[Thinking Clearly and Speaking Freely](#)," which is focusing on censorship actions by the Big Tech social media platforms, I want to examine a recent decision of the Court of Appeals for the Fifth Circuit in [NetChoice, L.L.C. v. Paxton](#). But first some background.

We're all familiar with the suppression of the *New York Post's* Hunter Biden laptop story as well as information related to the origin of COVID-19 and to the various pandemic responses. There are countless other examples, of course, ranging from removal of users' posts discussing gender, race, and education to downgrading of posts debating the meaning of the term "recession," as I discussed in "[Unnecessarily Flagging the 'R' Word](#)."

The problematic nature of Big Tech's censorship practices – you're welcome to call them "moderation" practices if you like – resulting in squashing information that should remain within the realm of legitimate public debate is widely acknowledged, even if there's disagreement about the remedy.

Thus far, sensitive to their First Amendment claims, I have been reluctant to embrace the oft-suggested notion, including in an [opinion by Justice Clarence Thomas](#), that perhaps major platforms like Twitter, Facebook, and YouTube should be treated as common carriers required to carry all lawful content in a nondiscriminatory fashion. In other words, that these social media websites should be required to post all lawful messages in the same way telephone and telegraph companies, classified as common carriers, must carry all messages.

At the same time, so far I have not endorsed any material changes to the notorious Section 230 of the Communications Act which broadly immunizes the social media platforms from liability for any claims related to restricting users' posts. It

accomplishes this by declaring the platforms "shall [not] be treated as the publisher or speaker" of content developed by other users.

In *NetChoice*, the Fifth Circuit, in a 2-1 split decision, rejected the argument that the Texas law prohibiting large social media companies from censoring content based on the viewpoint of the user violates the First Amendment free speech rights of the platforms. The Texas law requires major social media companies to function like common carriers. In his opinion for the majority, Judge Andrew Oldham declared that "the platforms offer a rather odd view of the First Amendment." According to Judge Oldham, the First Amendment "protects every person's right to 'the freedom of speech,'" but instead the platforms argue that "buried somewhere in the person's enumerated right to free speech lies a corporation's *unenumerated* right to *muzzle* speech."

After an extensive review of First Amendment jurisprudence, Judge Oldham rejected "the idea that corporations have a freewheeling First Amendment right to censor what people say." In his view, the Texas law neither forces the platforms to speak or interferes with their *own* speech in a way that infringes their free speech rights.

It's important here to note that the Eleventh Circuit Court of Appeals has reached the opposite conclusion regarding a challenge to a similar Florida law requiring viewpoint neutrality by the platforms. Most observers expect the Supreme Court likely will consider the constitutionality of at least these two state laws in the next couple of years.

But now back to Section 230. Without relying on the immunity provision, the Fifth Circuit determined the Texas law doesn't violate the platforms' First Amendment rights. But it said that if any doubts existed, Section 230 would extinguish them. This is because "Section 230 reflects Congress's judgment that the Platforms do not operate like traditional publishers and are not 'speak[ing]' when they host user-submitted content." Congress's judgment reinforces our conclusion that the Platforms' censorship is not speech under the First Amendment."

The platforms contend, by virtue of their moderation actions, that, in fact, they are speakers and publishers, even though Congress explicitly said they shouldn't be treated as such with respect to their actions censoring user-posted information. Judge Oldham explains that the platforms repeatedly have told courts that they are

mere "conduits" for user speech. And that what might look like the exercise of editorial discretion is simply the application of "neutral tools" to moderation actions. Thus, Judge Oldham says, "the Platforms' frequent affirmation of Congress's factual judgment underlying § 230 makes us even more skeptical of their radical switcheroo that, in this case, they *are* publishers."

In her concurring opinion, Judge Edith Jones agrees that the "business of the regulated large social media platforms is hosting the speech of others," and that, "[f]unctioning as conduits for both makers and recipients of speech," they do not analytically resemble publishers like newspapers. She concludes the Texas law allows a multiplicity of voices to contend for audience attention on the platforms, "a pro-speech, not anti-free speech result."

While I'm not prepared here to conclude that the Fifth Circuit reached the correct result, the majority opinion is persuasive in many respects. It's likely the Supreme Court will provide some much-needed clarity to the law in this area in the next two years.

In the meantime, by shining a spotlight on Section 230 in the context of evaluating the platforms' First Amendment challenge, the Fifth Circuit's opinion highlights the tension, if not the contradiction, between the platforms' claim, on the one hand, that they are mere *conduits* for the speech of others, and their claim, on the other, that they must be treated as *speakers* and *publishers* with regard to their censorious actions.

There may have been good reasons for adopting Section 230 in 1996 at the dawn of social media, but it's not clear it's necessary to retain the immunity provision today, at least in its present form. As the Fifth Circuit's spotlight on Section 230 highlights, it may require more than a little cognitive dissonance to square the platforms' claimed entitlement to First Amendment protection with their claimed entitlement to sweeping immunity.

REAL CLEAR MARKETS

It's Time to Revisit Section 230 - But Not For the Reasons You Think

By [Harold Furchtgott-Roth & Kirk Arner](#) June 11, 2020

Reacting to the perceived political bias of certain social media platforms, President Trump recently issued an [executive order](#) asking various federal agencies to review “Section 230.”

Few laws enjoy the status of being known simply as a number, but such is the aura of “Section 230.” Few people know it enough to call it “Protection for Private Blocking and Screening of Offensive Material,” Section 230’s [formal title](#).

To most people, that title doesn’t sound like it gives the federal government the authority to review—much less censor—online political content, or online speakers based on the political content of their speech. And indeed, Section 230 provides no foundation for government review or censorship of any online material whatsoever.

Instead, Section 230 is a limitation on legal liability for “interactive computer services” that post information provided by third parties. It was passed as part of the Communications Decency Act, or CDA, a law that attempted to prevent children from viewing online material deemed obscene, indecent, or otherwise offensive. In 1997, following an inevitable legal challenge, the Supreme Court [struck down most of the CDA in *Reno v. ACLU* on First Amendment grounds](#). But Section 230 survived.

In the year 2020—and indeed in the years 1996 and 1998 when Section 230 was written—the term “interactive computer service” was not and is not a term in common usage. Strangely, Section 230 repeatedly uses the phrase “the Internet and other interactive computer services,” as if the Internet were but one of many forms of interactive computer services. Other forms might have included electronic financial systems accessed by an ATM or a credit card system, not directly part of the Internet in 1996. In truth, the [statutory definition](#) of an

“interactive computer service” appears to be modeled more on AOL and other nascent internet providers circa 1996 than social media today:

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

Yet [courts have expanded the definition of what is considered an “interactive computer service”](#) to include not just ISPs, but practically any website—an interpretation seemingly inconsistent with Section 230’s language concerning “the Internet and other interactive computer services.”

Much Section 230 jurisprudence has focused on two specific subsections: (1) § 230(c)(1) liability protection from distributing material created by third parties, save for unlawful activities such as intellectual property theft; and (2) § 230(c)(2) liability protection for actions “to restrict access to or availability of material” that might be harmful to minors or “otherwise objectionable.”

Courts have interpreted these liability shield components expansively, seemingly far beyond the “offensive material” concept in the statutory language. Under the current interpretation of Section 230(c)(1), if Jane Doe posts a message on a social media site or other “interactive computer service,” Jane is the speaker, not the website. This distinction matters for a variety of tort claims that may arise relative to Jane’s content. For example, if Jane defames a person via a tweet or a Yelp review, Jane—not Twitter or Yelp—would be held personally liable in the event of a lawsuit. Under Section 230(c)(2), platforms are not liable when they remove undesirable content from their platforms, including a wide array of items such as pornography and even hate speech.

The [Electronic Frontier Foundation](#) labels Section 230 as “the most important law protecting Internet speech.” This is quite the accolade for a section of a broader series of laws that largely sought to censor the Internet and were eventually deemed unconstitutional on First Amendment grounds following an ACLU lawsuit.

Moreover, Section 230 as it exists today is a fragile foundation to protect online speech. Despite years of caselaw expanding the reach of Section 230, a future court may ultimately narrow this reach via stricter review of the statutory text,

based on either the definition of an “interactive computer service” or the statute’s apparent intent to censor online content in service of minors.

Additionally, a future court may insist that “interactive computer services” meet obligations under Section 230(d) in order to receive the liability protections of Sections 230(c)(1) and (c)(2). Section 230(d), inserted by Congress in 1998 after the CDA’s initial passage, states that:

A provider of interactive computer service 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 provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) 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)

It's not clear that any online service meets these standards. Indeed, few people likely recall receiving such a notice when joining a social media website. We examined the “Terms of Service” for [Facebook](#), [Snapchat](#), [YouTube](#), [Twitter](#), [Instagram](#), [Yelp](#), and other platforms that appear to meet the statutory definition of an “interactive computer service.” None has a close resemblance to the requirements of Section 230(d). None references 230(d), much less provides “parental controls,” filtering services,” or “current providers of such protections” for minors. Apparently, either these websites are not “providers of interactive computer service” or they are not in compliance with 230(d).

Yet despite Section 230’s obvious fragility, it remains important for online speech. That Section 230 originated as part of a statutory package effectively intended to censor online speech is perhaps the height of irony.

Nevertheless, absent the twin liability protections of Section 230, the user content-driven Internet we know and love today might cease to exist. Websites like Twitter, Facebook, and even newspapers with comment sections would become flooded with litigation by aggrieved parties. To stop the onslaught of this litigation, armies of content moderators or opaque algorithms would need to be deployed, resulting in the posting of user content being delayed by hours, or even days or weeks—if

it's even posted at all. This would only serve to further exacerbate the concern over whether social media companies remain neutral forums for political and other controversial forms of speech.

Much has been made of the conduct of Twitter in recent weeks in the context of the Section 230 debate. Perhaps wanting to seem more like a neutral moderator than a censor, Twitter has increasingly refrained from outright removing content from its platform—particularly the speech of prominent political figures. Instead, it has taken the tack of labeling certain content as being in violation of its terms of service, promoting disinformation, or failing to pass the muster of a political “fact check.” Indeed, such labeling of one of the president’s tweets was the impetus behind his executive order in the first place.

In doing this, though, Twitter exposes itself to more, not less, legal liability. By marking users’ posts as false, misleading, or perpetuating disinformation, Twitter exercises its own speech, independent of its users. Thus, Section 230 does not, and should not, protect such comments.

While the bar for defamation of public figures [is exceedingly high](#), the president, other politicians, or even individual citizens, displeased by the notion of being publicly branded a liar or propagandist, have and should continue to have every right to pursue legal action against such effective labels. And as a practical matter, this labeling is hardly a less intrusive interference with the free flow of ideas online. Indeed, in many ways—particularly given the ambiguity of what should or should not survive a political fact check—such labeling is a much more opaque and nefarious means of online censorship than simply removing users’ posts altogether.

Section 230 is praised by many yet understood by few. Its origin as part of a larger legislative package intended to sanitize the Internet for minors is perhaps the height of irony. This original intent may also put the future of Section 230 in peril, subject to the whims of future courts. Additionally, a court might find that services that do not meet Section 230(d) obligations are simply not “interactive computer services,” and thus are ineligible to receive Section 230’s twin liability protections. Few services meet those obligations today.

Ultimately, Section 230 should be reviewed by either Congress or the FCC to clarify its meaning, safeguard its protections for online speech, and strengthen it to withstand future review by discerning jurists.

AMERICAN THINKER

August 28, 2019

Where 'Section 230' fits in the social media censorship war

By [Taylor Day](#)

In the past few months, you may have noticed headlines about lawsuits being filed, be it by [PragerU](#), [Laura Loomer](#), or former Google employees against social media giants with claims that they are actively censoring and discriminating against conservatives on their platforms. All of these cases cite the elusive "Section 230" as their basis.

There are some misconceptions about what Section 230 is. Sometimes referred to as CDA 230, it was written into the Communications Decency Act of 1996 by Rep. Chris Cox (R-Calif.) and Sen. Ron Wyden (D-Ore.). The act was passed in 1997 with bipartisan support and was the response to a [landmark Supreme Court decision](#) the year before against the financial internet bulletin board Money Talks, run by a company called Prodigy, in a suit brought by the investment firm Stratton Oakmont. (Later, the case would be the basis for the Hollywood movie *Wolf of Wall Street*.)

Anonymous users with airs of authority had posted false information that the president of Stratton Oakmont was involved in criminal fraud, and some people lost a lot of money as a result of the defamation. Eventually, a civil case was filed to sue Prodigy. The court essentially had to rule whether these sites were more like newspapers or libraries — publisher or platform. The court ruled in favor of the plaintiffs and held Prodigy liable for damages since it had "editorial control" over the content on its sites.

The Communications Decency Act was then created to prevent these lawsuits in the future and legally protect the first internet forums from liability for any falsehoods and vileness in their posts and comments. Specifically, Section 230 has been cited as the one line of federal code that has more economic value than any

other and the reason social media giants exist today, as well as the bedrock of free speech on the internet.

But it's also the reason for the worst stuff on the internet, having served to protect sites like Twitter when they host revenge porn, gruesome videos, violent death threats, [ISIS videos](#), and more.

The 1996 CDA was [finally amended](#) in 2018 when the Backpage.com lawsuit regarding sex-trafficking of minors blew up. Politicians tried to use Backpage.com's issue of minors being hosted in their "adult services" sections to claim that the internet service, which mirrored Craigslist, was not only invested in, but also aiding in illegal sex-trafficking of children. Presidential candidate Kamala Harris publicly stated that Backpage was "selling children."

However, in [secret memos](#) obtained by Reason, we see that this isn't true. Years before, investigations were launched and then continuing while the site was under the legal spotlight. Backpage, it turned out, was actively involved with the FBI and police to *stop* these abuses on its site.

However, Backpage lost the case when this information was withheld from the court proceedings, and the Department of Justice shut down Backpage in 2018 and arrested some of the executives. Section 230 was redefined in the process.

An amendment to Section 230 was interpreted to the effect that social media sites *must* be actively policing their sites for issues that affect their users' well-being. This is when the community guidelines of Twitter, YouTube, Google, and Facebook really started to evolve into the vague monsters they are today. Now the entire purpose of Section 230 is to screen and remove objective material. However, to have to [protection under CDA 230](#), the "interactive computer services" must "offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."

The argument isn't whether social media should be allowed to edit, moderate, and remove content by their users. The purpose of the CDA and Section 230 is to give them that control while treating them as a platform. The true debate is whether they are purposely targeting conservatives and affecting public political discourse.

It's easy to see that they are, and most users, even liberal ones, agree that conservatives are disproportionately censored by all big social media networks. These tech giants argue in their defense that regardless of whether they consider right-leaning views more likely to violate their community standards, conservative users still have larger engagement, offering data that Fox News has way [more social media traffic](#) than their liberal competition like CNN and MSNBC.

WASHINGTON TIMES

Fixing Section 230: Twitter, Facebook and social media should be legally part of the public square

By [Peter Morici](#) - - Wednesday, January 6, 2021

OPINION:

Too often Internet platforms violate our privacy, arrogantly regulate speech and abuse monopoly power, but it is important to recognize what are and are not problems.

Bigness is not necessarily an issue and often offers resources to propel progress. Facebook is a leader in artificial intelligence research, Google gave us Android, Amazon pioneered cloud computing and Apple is poised to make electric vehicles. Smaller companies lack the billions of dollars necessary to make those kinds of bets.

Unfortunately, the FAAGs too often behave as if run by adolescents and now face antitrust scrutiny. Apple for overcharging app developers, Amazon for strong-arming small businesses on its platform, Google for manipulating ad-space-auctioning software to hobble competitors, and Facebook for acquisitions that allegedly monopolize the social media market.

Facebook may have a monopoly by providing a substantially differentiated digital bulletin board where we can keep up with family and locate lost classmates, but it is a free service making nonexistent direct economic harm to consumers — the sine qua non of modern antitrust enforcement.

In the advertising market, Google has the largest market share. It is noteworthy that the Justice Department has gone after Google, not Facebook, for monopoly abuse in the online ad space.

The Federal Trade Commission suit against Facebook is so wrongheaded that it appears a desperate government attempt to rein in the company owing to gross data privacy misdeeds going back to the Cambridge Analytica and affair and enabling Russian meddling in the 2016 presidential campaign. And for the complaints of Democratic and Republican politicians about editorial abuses at both Twitter and Facebook.

Forcing Facebook to divest Instagram and WhatsApp, as the FTC seeks, won't solve the data mining and privacy problems — that requires legislation similar to the EU General Data Regulation, which requires that users understand and consent to the data collected about them and how it will be used.

Section 230 of the Communications Decency Act provides Twitter, Facebook and lesser Internet platforms with expansive legal immunity for the statements and other material users post. It exempts service providers from civil liability for actions “taken in good faith to restrict access to or availability of material the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” And for providing users with tools to restrict access to such materials.

President-elect Joe Biden wants to revoke those protections and permit websites to be sued, and more generally Democrats would like Twitter, Facebook and others to remove what they view as false information — such as President Trump's claims that mail-in voting will lead to fraud. Republicans are incensed that Twitter added comments to some Trump tweets warning those statements could be misleading.

All sides appear to miss even bigger problems.

U.S. Supreme Court Justice Clarence Thomas argues lower courts apply Section 230 too expansively. Internet platforms have been found exempt from liability even when they know the content or activity it enables is illegal — for example, child pornography, human trafficking and terrorism.

With millions of daily posts, it is impossible for Twitter and Facebook to catch everything, but they could be compelled — or be held criminally or civilly liable — to remove material they know is illegal or facilitates crimes. And for failing to preemptively screen material that could incite civil unrest until the full context of an incident is determined and accurately portrayed.

As for political and other speech, Twitter and other platforms have been accused of an anti-conservative bias in the content they exclude and promotes. This is broadly protected, because the courts do not treat Internet providers as public squares where viewpoint discrimination is impermissible.

Absolute neutrality is impossible but the ruminations of politicians — as long as their posts are not illegal and do not incite illegal assembly, destruction of property or violence — should be left to the intelligence of voters. They may be technology wizards, but Jack Dorsey and other Internet magnates hardly have exhibited the God-anointed wisdom of emperors and popes to judge what ordinary mortals should see and hear.

Most folks can sort falsehoods for themselves, and often what is false is in the eyes of the beholder.

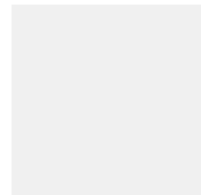
Twitter, Facebook and other social media have become so pervasive that they have become the public square — and legally should be treated as such. Neutral arbitration panels — with equal representation chosen by Republican and Democratic leaders — should oversee editorial decisions to ensure some measure of objectivity.

It's not perfect, but if you want perfection you will have to wait for the hereafter — St. Peter won't be facing a primary challenge anytime soon.

- *Peter Morici, @pmorici1, is an economist and emeritus business professor at the University of Maryland, and a national columnist.*

LIBERTY PLANET

Section 230: How Social Media Companies Get Away with Censorship



It's no shock to those who are paying attention that leftist social media sites like Twitter and Facebook are censoring posts and comments. Unfortunately, this censorship focuses heavily on user-generated content that does not coincide with the established narrative. But if conservative lawmakers have their way, that may all be about to change.

You have probably heard the term "Section 230" batted around by political pundits on news shows. Still, few take the time to describe it in detail or how it can have such a significant effect on the behavior of companies that control social media apps and websites. A video from Learn Liberty takes a deep dive to uncover the history behind Section 230 and its possible future.

Section 230 is part of the Communications Decency Act of 1996 and states, in part, that "No provider or user of an interactive computer shall be treated as the publisher or speaker of any information provided by another information content provider." This allows an online platform to host user-created content on their service without being considered the content's legal owner or publisher. Since the online service provider is not deemed the owner or publisher of any user's content, the online company will not be held libelous in most claims stemming from that content. This protection has given entrepreneurs the confidence to create various online businesses that rely heavily on user-created content.

But if Section 230 has helped create businesses, why is there such a push to repeal Section 230?

Jennifer Huddleston, the Director of Technology and Innovation Policy at the American Action Forum, points out that Section 230 is also the part of the act that allows online platforms to moderate user-created content by deciding what to delete and what is allowed to remain. For many people, it is this part of Section 230 that is so troubling.

The conservative argument against Section 230 is that some online service providers are taking advantage of it by censoring any content posted by a user that is favorable to conservatives or critical of progressives. Of course, there are many examples of this taking place, but it is important to note that Section 230 does not take sides when it comes to politics. There is nothing inherently supportive of the left within the act. The liberals are not too fond of Section 230 either. But instead of pointing out biased censorship, they believe that the section doesn't go far enough to prevent so-called harmful or misleading online content.

At the end of the day, one of the most fundamental and beloved freedoms in the U.S. is the right to speak freely. Any concrete attempt to bypass this freedom needs addressing immediately.

Take a deep dive into Section 230 below:

THE GATEWAY PUNDIT

Pfizer Exec Scott Gottlieb Responds to Evidence that He Pressured Twitter to Censor Author Berenson's Account – Insists It Was to Protect Fauci (VIDEO)

By [Jim Hoft](#) Published October 16, 2022 at 1:20pm

Last week former NY Times reporter and author Alex Berenson published email evidence that former FDA Commissioner Dr. Scott Gottlieb wrote Twitter and pressured the social media giant to censor his content on their platform.

Stunning revelations from [@AlexBerenson](#) about [@ScottGottliebMD](#)'s role in getting Berenson banned from Twitter for questioning necessity of mRNA vaccines for all. Horrifying conspiracy between a Pfizer board member and the Biden admin to silence dissent. <https://t.co/YoM7V3k9DY>

— Jenin Younes (@Leftylockdowns1) [October 14, 2022](#)

On Friday Pfizer executive Scott Gottlieb told CNBC that he pressured Twitter to censor Berenson because Dr. Fauci might get threats.

These people are just evil communists.

Gottlieb responded this morning on CNBC to what host Joe Kernan called a “convoluted conspiracy theory” by Berenson. No bias there!

Gottlieb is sticking with the ‘threats to Fauci’s safety’ argument (see below).

“I’ve raised concerns around social media broadly, and I’ve done it on these networks, around the threats that were being made on these platforms – and the inability of these platforms to police direct threats, physical threats, about people,” he said.

“I’m not concerned about debate,” Gottlieb continued. “I am very concerned when threats are being made, physical threats, against people’s safety – I am very concerned about physical threats being made against people’s safety, and the people who gin up those threats against individuals.”

There is ZERO evidence that Alex Berenson threatened Dr. Fauci, the father of the COVID19, at any time. Dr. Gottlieb knows better

“I’ve raised concerns about social media and the threats that are being made on these platforms,” says [@ScottGottliebMD](#) on Alex Berenson being kicked off Twitter. “I’m unconcerned about debate being made. I’m concerned about physical threats being made for people’s safety.” pic.twitter.com/hxpALi6dZ

— Squawk Box (@SquawkCNBC) [October 14, 2022](#)

After The Gateway Pundit Calls Out Their Fake “Fact-Check” – Lead Stories Downgrades But Won’t Remove Flag Because They Disagree with How the Headline “Sounds”

By [Assistant Editor](#) Published October 16, 2022 at 12:15pm

The Gateway Pundit reported last week on how [Big Tech and Big Pharma continue to silence opinions](#) they deem unacceptable even when the testimony of company officials in the EU Parliament.

In their latest efforts to protect Big Pharma, the globalists are hiding behind [Chinese-backed Lead Stories](#) and Madison Dapcevich’s ridiculous ‘fact-check’ to flag posts that shared the shocking revelations by a Pfizer director in the EU parliament.

The Pfizer director revealed that the COVID vaccine was not tested on its ability to prevent transmission.

Initially, Lead Stories author Madison Dapcevich, who has a degree in journalism and not science, placed a “[false](#)” rating on TGP’s story. Soon after TGP’s article calling them out was published, they changed the rating to “missing context.”

Lead Stories explains the change in types of flags due to labeling for the headline, not the content of the story.

TPG’s headline reads: BREAKING BIG: Pfizer Director Admits Vaccine was Never Tested on Preventing Transmission During EU Hearing Contrary to Previous Claims (VIDEO)

TGP’s headline says previous claims, not previous claims made as part of the actual study.

Further, Lead Stories writes in their explanation for flagging TGP’s headline is “Mainly because the Instagram image and caption left out any mention of the studies that were carried out about transmission after the clinical trial,” and that it

was “making it sound like something was ‘admitted’ or ‘advertised’ about transmission by Pfizer solely on the basis of the clinical trial.”

So now Big Tech can silence views because they have determined what should or shouldn't be in a story or even a headline? Have these fact-check organizations now become online opinion's defacto editor?

Further, that “assumption” was never part of our story. TGP shared Robert “Rob” Roos, exchanged with Pfizer's president of international developed markets, Janine Small, exposed the lie that people from all over the world had been led to believe. A lie that was reinforce by Fauchi, the Biden Administration and governments throughout the world.

“This removed the entire legal basis for the covert passport. The COVID passport that led to massive institutional discrimination as people lost access to essential parts of society. I find this to be shocking, even criminal,” Roos added.

During the hearing, when asked by Ross if the Pfizer COVID vaccine tested on stopping the transmission of the virus before it entered the market, Janine Small responded while smiling:

“Regarding the question around did we know about stopping immunization before it entered the market? No. We have to really move at the speed of science to really understand what is taking place in the market.”

Lead Stories goes on to say, “As your email to us indicates, you are of course free to advocate that testing the effect of a vaccine on transmission should happen before it enters the market, possibly even before testing for safety and efficacy in preventing the disease has been completed. What our [fact check](#) objects to is the false implication (or in the case of the headline even the explicit claim) that such studies “never” happened in this case.”

And there you have it. They “object” to our implication. And that objection becomes a flag for false information. When called out that egregious behavior, it becomes “missing context.” And too many flags on social media mean you lose access to the platform and readers only have access to opinions that conform to acceptable viewpoints.

Please see the entire exchange below.

From the Gateway Pundit:

A recent “fact check” by Lead Stories is being used to flag one of our social media posts as “False Information.”

We assert that this flag was posted erroneously as the basis of the “fact check” is focused on a premise that was not part of our story.

You have now changed it to “missing context” which is still erroneous.

We ask that the flag is removed promptly.

Social media post: <https://www.instagram.com/p/CjIVsEPO5EB/?igshid=YmMyMTA2M2Y%3D>

Video: https://twitter.com/Rob_Roos/status/1579759795225198593?s=20&t=3nbULPQh8er9SEi4bDNG-g

Fact-check: <https://leadstories.com/hoax-alert/2022/10/fact-check-pfizer-covid19-vaccine-clinical-trial-not-intended-to-test-effect-on-transmission.html>

The Gateway Pundit article did not assert that testing for transmission was part of the clinical trials.

“Pfizer, based in New York City and maker of another leading COVID-19 vaccine, says that it will start swabbing participants every two weeks in vaccine trials taking place in the United States and Argentina, to see whether the shot can prevent infection,” according to an article published on February 2021 at [Nature](#), two months after the Pfizer vaccine was authorized for emergency use.

Isn't this a clinical trial?

Lead Stories also mentions that the vaccine’s ability to prevent transmission [was assessed later](#) in the roll-out of the vaccine, which was developed in response to a worldwide pandemic.

They can actually test for transmissibility if they want to, but they choose not to. And yet, the Pfizer COVID vaccine was marketed with the claim that it would stop the spread of the virus.

On November 09, 2020, one month before the first COVID vaccine was made available under EUA, Pfizer released a [news release](#) claiming the vaccine candidate was found to be more than 90% effective in preventing COVID-19 in participants without evidence of prior SARS-CoV-2 infection the first interim efficacy analysis from Phase 3 study.

“Today is a great day for science and humanity. The first set of results from our Phase 3 COVID-19 vaccine trial provides the initial evidence of our vaccine’s ability to prevent COVID-19,” said Dr. Albert Bourla, Pfizer Chairman and CEO. “We are reaching this critical milestone in our vaccine development program at a time when the world needs it most with infection rates setting new records, hospitals nearing over-capacity, and economies struggling to reopen.

“The first interim analysis of our global Phase 3 study provides evidence that a vaccine may effectively prevent COVID-19. This is a victory for innovation, science and a global collaborative effort,” said Prof. Ugur Sahin, BioNTech co-founder and CEO.

Whether or not efficacy of the vaccine against transmission was part of the trials was not the focus of our article. Our focus was on Pfizer ‘s admission it was not tested for stopping the transmission yet they were advertising that it would prevent the transmission.

Madison, we will be reporting on the change from false to missing context and we would like to include a statement from you in our article. We will be posting the report tomorrow, please respond with your statement to be included in our article by 10 am eastern.

Please let me know any additional questions. Thank you.

Lead Stories response:

The initial “False” rating was based on people sharing the Instagram image of the headline of The Gateway Pundit’s article, which claimed preventing transmission was “never” tested. As [the link from February 2021 which The Gateway Pundit sent us](#) proves, studies looking at transmission were already taking place only a short while after the clinical trial and [the granting of the FDA emergency use authorisation in December 2020](#) so this is obviously false.

A later revision of the rating also took into account the caption of the Instagram post, which contradicts this headline and says the statement was about tests done “before it entered the market”.

That brought down the rating to “Missing Context”, mainly because the Instagram image and caption left out any mention of the studies that were carried out about transmission after the clinical trial (which were already being [written about in the media](#) in February 2021) and making it sound like something was “admitted” or “advertised” about transmission by Pfizer solely on the basis of the clinical trial (which was not set up and not presented as testing anything related to transmission, the purpose was to test safety and the ability to prevent people from becoming ill with Covid-19).

*Note that [the FDA EUA](#) already said this about the clinical trial results in December 2020: “At this time, data are not available to make a determination about how long the vaccine will provide protection, **nor is there evidence that the vaccine prevents transmission of SARS-CoV-2 from person to person.**” so this is not new information. But ignoring any research carried out after this statement was made paints a grossly incomplete picture.*

To date The Gateway Pundit has not provided any evidence of Pfizer “advertising” anything based on claimed effectiveness against transmission supposedly found during the clinical trial. The [Pfizer news release](#) that The Gateway Pundit provided to us was from November 2020 and spoke of “initial results” from the clinical trial regarding the effectiveness of “preventing Covid-19”. It does not contain the words “spread”, “transmit”, “transmission” or “transmissibility”.

A [video clip embedded on the website of The Gateway Pundit](#) claiming to show various statements urging people to “take the vaccine to stop the transmission” only appears to contain statements that were made after some of the studies concerning transmission already published their initial results and none of the statements refer to Pfizer’s clinical trial.

As your email to us indicates, you are of course free to advocate that testing the effect of a vaccine on transmission should happen before it enters the market, possibly even before testing for safety and efficacy in preventing the disease has been completed. What [our fact check](#) objects to is the false implication (or in the

case of the headline even the explicit claim) that such studies “never” happened in this case.

NY POST

How social media censorship ‘silences’ conservative thoughts

By

[Doree Lewak](#)

Filmmaker Maggie VandenBerghe says her videos, like one of Joe Biden's gaffes (in article below), have been unfairly censored by Instagram fact-checkers.

For the past eight years, Esther Berg has been posting regularly for her 330,000-plus Instagram followers. Now she's locked out of her EstherandSasha account.

While the influencer normally covers a range of lighthearted lifestyle issues, on Sept. 14 the registered Republican posted a story comparing Ivanka Trump with Chiara de Blasio — juxtaposing a glam photo of the president's daughter with a picture of the NYC mayor's daughter curled up on the subway and baring her body, accompanied by the caption: “On November 3rd, you decide what kind of America you want your daughter growing up in ... Vote.”

The next day, Berg, who splits her time between Florida and Long Island, discovered her account was locked. A message from the platform said it had been disabled and to check back in 30 days. An Instagram representative told The Post: “We do not allow people to show intimate images of others without their consent.”

But Berg notes that the same photo of Chiara is still up on [other accounts](#).

“I believe that, although my post . . . may have been in poor taste compared to what I usually post, I didn't violate any community guidelines,” Berg told The Post. “They censored me for my conservative views.”

Berg, like other right-leaning influencers, is outraged over what she calls a “double standard” targeting pro-Trump voices. “There are multiple hashtags saying ‘KillTrump’ that incite violence. But posting a photo that might have been in poor taste yet doesn't violate guidelines gets you banned.”

Allum Bokhari's new book, ["#Deleted: Big Tech's Battle to Erase the Trump Movement and Steal the Election"](#) (Center Street), delves into social media's silencing of right-wing voices.

"If you're going to have the rules, you should enforce them evenly, and that's not happening. And the reason for that is that the point of the rules is to go after right-wingers," the Breitbart News senior tech writer told The Post.

"The strategies [social-media platforms] are using to silence people on the right is getting crazier by the day," said Maggie VandenBerghe, a conservative filmmaker known as @fogcitymidge on Instagram.

In July, VandenBerghe, who has 202,000 Instagram followers, posted a [video of Joe Biden](#) with unambiguous jump cuts, showing a series of verbal gaffes. It racked up some 200,000 views before being hit with a disclaimer: "Partly False Information. Reviewed by independent fact-checkers." Instagram claimed the video was "deceptively edited to make him appear 'lost.' "

Esther Berg's Instagram account was locked for 30 days after she posted images comparing Ivanka Trump to Chiara de Blasio. Getty Images

VandenBerghe told The Post: "I've never manipulated a video in my life. These fact-checkers are spreading disinformation by silencing the truth. It's about controlling what you're allowed to talk about."

She added that her fact-checked posts hurt her career and brand. "If there's a fact-check symbol on it, it won't be shared . . . it's a good way of delegitimizing my work."

The Instagram rep said: "While @fogcitymidge may not have edited the original video, we still applied the label to the video . . . to help others understand that fact-checkers confirmed it was deceptively edited."

Bokhari writes that shortly after the 2016 election, Facebook, which owns Instagram, ramped up efforts to "'fix' what had gone wrong [in the election]," adding that meetings had "a clear focus on how to make elections 'better.' "

Last December, Instagram announced the rollout of 45 “third-party fact-checkers who are certified through the nonpartisan [International Fact-Checking Network](#) to help identify, review and label false information.”

According to the platform’s rep, “Many Democrats think we aren’t doing enough, while many Republicans think we go too far, and that we censor them. That is why we have established rules that allow both sides to see [what we will and won’t allow](#).”

Former “Real Housewives of New Jersey” cast member [Siggy Flicker](#), who has 430,000 Instagram followers, believes her posts have been hidden, or shadow-banned.

Several of her Instagram posts include disclaimers. One is a video posted on Sept. 23 showing Louisville, Ky., protesters, with Flicker commenting in part: “Who would ever vote for a party that supports this?? Who paid for the U-Haul? Who paid the protesters?”

A warning on the posts reads, “Missing Context: Independent fact-checkers say information in this post can mislead people.” It also says there is “disinformation about Louisville, a U-Haul and George Soros.”

But Flicker said, “I never mentioned George Soros’ name!”

“These so-called ‘fact-checkers’ allow posts comparing the first lady to dictators to stay up, but silence those on the right who dare to . . . back the president,” Flicker said, citing an August post from the popular @diet_prada account, comparing Melania Trump’s outfit to [fascist leaders](#).

Said the Instagram rep: “Content isn’t fact-checked because others find it offensive.”

Flicker doesn’t buy it. “The minute you put #Trump2020 on a post, you’re a target.”

For Berg, she’ll wait out the month to find out her fate. “They shut me down because I have a loud mouth and making a lot of noise. And it’s weeks before the election,” she said. “There’s censorship going on. They’re silencing conservative voices and picking when the community guidelines are enforced.”

Because she's not able to post "collaborated" content, "I lose money every day," Berg said, adding that the small businesses she regularly promotes lose out, too.

"It's like I never existed. You can't find me."

[Media vs. the People: The War over Pedophilia](#)

[How Predators are Using Social Media to Exploit Your Child and What You Can do to Stop Them](#)

[Twitter lets pedophiles publicly discuss their sexual 'attraction to minors,' scholar argues](#)

[Social Media: a pedophile's digital playground.](#)

[Child Sexual Exploitation](#)

[Teen terrorism inspired by social media is on the rise. Here's what we need to do.](#)

[Islamist Terrorists Shifting from Web to Social Media](#)

[18 Case Study: Terrorist Usage of Social Media](#)

[Facebook Admits It Reported Faulty Numbers To Advertisers, Blames Apple](#)

[Facebook admits its AI failed to flag the New Zealand terror attack livestream](#)

[Facebook Admits Social Media Can Be Very Bad for Democracy](#)

[Facebook Quietly Hid Webpages Bragging of Ability to Influence Elections](#)

[Mark Zuckerberg spent \\$419M on nonprofits ahead of 2020 election — and got out the Dem vote](#)

[Don't Be Fooled: 'Nonpartisan' Get-Out-The-Vote Efforts Always Benefit Democrats](#)

[Zuckerberg's election spending was 'carefully orchestrated' to influence 2020 vote: ex-FEC member](#)

[Report: Zuckerberg Money Used in Violation of Federal Election Law](#)

[Facebook Election Interference Report – READ IN FULL](#)

[From 'crazy' to 'regret' — here's how Facebook's positions on Russian interference evolved over time](#)

[Facebook Quietly Admits Its Third-Party ‘Fact-Checks’ Are ‘Opinions’](#)

[Facebook boosted US election turnout via psychology experiment, company reveals](#)

[Zuckerberg Admits Facebook Suppressed Hunter Biden Laptop Story ahead of 2020 Election](#)

[STUNNING: Zuckerberg Revelation Shows FBI Interfered for Biden in 2020 Election](#)

White House partners with social media influencers to pitch Biden policies

Newly released emails show coordination between social media companies and Biden administration on COVID information

Under Biden, Government Forces Social Media Companies to Censor Americans

Biden administration outsourcing online censorship of conservatives

Facebook Joins Twitter and Announces Its Plans to Influence 2022 Midterm Elections