



Debate Brief • Section 230

Resolved: Congress should repeal Section 230 of the Communications Decency Act.

“REPEAL SECTION 230!!!”

—President Donald Trump, Twitter, October 6, 2020

“If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.”

—Justice Louis D. Brandeis, *Whitney v. California*, 1927

“The freedom of the human mind is recognized in the right to free speech and free press.”

—Calvin Coolidge, *Duty of Government*, 1920

IMPORTANT

It is the intent of the tournament organizers for students to debate Section 230 as it pertains to liability regarding primarily areas such as libel, slander, and political speech, NOT as it pertains to areas such as indecency, obscenity, or pornography. Judges will be instructed to look for the former, not the latter, and teams that run cases based on arguments centered around indecency, obscenity, or pornography will forfeit the round.

ABOUT THE COOLIDGE FOUNDATION

The Calvin Coolidge Presidential Foundation is the official foundation dedicated to preserving the legacy and promoting the values of America's 30th president, Calvin Coolidge, who served in office from August 1923 to March 1929. These values include civility, bipartisanship, and restraint in government, including wise budgeting. The Foundation was formed in 1960 by a group of Coolidge enthusiasts, including John Coolidge, the president's son. It maintains offices at the president's birthplace in Plymouth Notch, Vermont, and in Washington, D.C. The Foundation seeks to increase Americans' understanding of President Coolidge, his era, and the values he respected.

BACKGROUND

The Bulletin Board v. the Newspaper Owner

In the early days of the world wide web—for our purposes, the 1990s—nobody knew exactly how websites and web content would evolve. Most websites were “static” in the sense that the content that they served up consisted of news articles, essays, and other information that was written and posted by the person or company that owned a given site.¹ There were some forums that enabled users to be “interactive,” but those forums were limited in their capabilities and limited in their reach. They more closely resembled the text-based bulletin boards of the 1980s than the advanced websites and apps that we have today.

As the web grew in terms of users, capabilities, and in its level of commercial activity—and particularly as “platforms” of user-generated content and speech exploded in popularity—it became clear that society was going to need guidance on which laws from the physical world should apply to the world of bits and bytes.

According to United States law, the publisher of speech that is defamatory can be held liable for damages that are caused by that speech. Companies that publish their own content (like a newspaper) are used to exercising care over what they publish so as not to open themselves up to expensive lawsuits. But what about when the company merely provides the online *platform*, and the actual *content* is produced by individual users? Then the platform is something like a bulletin board in a town square, where people come and go, leaving their messages. Who should be liable when something goes awry—the user, or the online platform?

Initial Disagreement Across the Courts

In the early 1990s, the courts could not agree. For instance, in a 1991 case called *Cubby, Inc. v. CompuServe Inc.* (776 F. Supp. 135), an online platform company called CompuServe was not held liable for allegedly defamatory content that was posted by a user on one of its online bulletin boards.² Later, in a 1995 case called *Stratton Oakmont, Inc. v. Prodigy Services Co.* (WL 323710), the online platform was held liable of user-created content. The main difference in the cases was that in the first case, CompuServe made *no* attempt to moderate its content and therefore could claim it was completely uninvolved in the posting of user content, whereas in the second case, Prodigy *did* make some attempt to moderate content and therefore could be held responsible when some damaging content slipped through. So Prodigy was more like the newspaper of old, where the owner was—and is—liable for the content he publishes.

¹ The New York Times did not begin publishing daily online until January 22, 1996.

² Simons, et al. “[Part I: The History and Evolution of Section 230](#)” Lexology. September 25, 2020.

Clarification Arrives

To address the confusion from these and other cases, and to address other growing concerns, Congress enacted the Communications Decency Act (CDA) of 1996.³ Although some of the Communications Decency Act has since been struck down by the Supreme Court and ruled unconstitutional, one crucially important provision has changed the course of history and still stands to this day: Section 230.⁴

Perhaps the most important part of Section 230 is the following sentence:

"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."
(47 U.S.C. § 230)

In effect, this key part of Section 230 stipulates that online platforms are not to be considered publishers like newspapers, and that in the event that any user-generated content causes legal liability, it is the individual users who are to be held liable for what is posted, not the companies. In other words, Section 230 says a platform can be more like a bulletin board than a newspaper.

By lifting this risk off the shoulder of the platforms, Section 230 in effect paved the way for what eventually became "Web 2.0," i.e., the phase of Internet growth characterized user-based platforms such as Facebook, YouTube, and Twitter. The companies were able to build their platforms, chat rooms, and forums without having to legally vet every piece of content contributed by a user.⁵ Without this type of protection, it is unlikely that many of these social media websites would exist today—at least in the form that we know them.

Section 230 Newly Under Fire

For more than 20 years, Section 230 was upheld and existed with relatively little notoriety. Recently, however, voices across the political spectrum recently have begun to call Section 230 into question. For instance, some Americans want to repeal Section 230 because they view it as contributing to the corporate wealth and power of large social media companies. These critics want social media companies to take more responsibility over the way that their platforms are used by advertisers and foreign governments such as Russia.

Other critics are pushing for repeal of Section 230 because they want to pressure social media companies into creating a fairer platform. Some claim that the social media display and offensive and suppressive anti-conservative bias. For instance, such critics claim that Twitter suppresses tweets from individuals with conservative viewpoints, that YouTube de-monetizes videos expressing conservative viewpoints, and that Facebook unjustly suspends user accounts

³ Wyden, Ron. "[Floor Remarks: CDA 230 and SESTA](#)" U.S. Senate, March 21, 2018

⁴ For the full text, see "[47 U.S. Code § 230](#)" hosted by Cornell Law School's Legal Information Institute.

⁵ Angwin and Grassegger, "[Facebook's Secret Censorship Rules Protect White Men From Hate Speech But Not Black Children](#)" ProPublica. June 28, 2017.

merely for voicing critical or unpopular opinions. The proposal to repeal Section 230 has thus managed to gain some support from people of all political background. President Trump criticizes Section 230 and has tweeted “REPEAL SECTION 230.”

Where Do We Go Now?

Now you get a chance to think about this challenging issue from both sides. Should Section 230 be repealed, so that social media companies such as Facebook, Twitter, and YouTube can be held liable for the content that appears on their digital platforms? Or should Section 230 stand, with companies enjoying liability protection and liability falling to the users? For this tournament, we want you to think about the associated costs and benefits (which can be thought of in terms of economics, or rights-based, or both), and come up with your best case for both sides.

COOLIDGE CONNECTION

(Reminder: Judges are instructed to look favorably upon historical references to President Coolidge!)

In Coolidge's day, there were also questions raised about free speech and the responsibilities of publishing platforms such as newspapers and radio stations. During World War I the Wilson Administration became concerned that new Americans might support the enemy. Russia was just experiencing the Bolshevik revolution, in which revolutionaries overthrew the czar (emperor) and installed a communist government. Americans were concerned that the communist ideology would spread here in America, either by way of radical anarchists finding ways to destabilize our government or by way of working-class people organizing labor strikes and attempting to overthrow the middle class.

Newspapers were in the thick of the controversy. Some American newspapers contributed to the fear by stoking negative sentiment against immigrants coming from Europe. Other papers supported the goals of social agitation. Depending on the source, strikes and other actions were either portrayed as "radical threats to American society" inspired by "left-wing, foreign agents provocateurs" or as "legitimate labor strikes" in pursuit of fair wage reforms overdue in the United States.^{6,7}

President Woodrow Wilson signed the Espionage Act of 1917 and the Sedition Act of 1918, which in differing ways made it illegal to advocate for foreign governments or express opinions that could be interpreted as undermining the government. U.S. Newspapers' reactions were mixed. Many in fact supported the acts, though some were badly hurt by it. Foreign language newspapers, particularly German- and Italian-language papers, were suppressed out of concern they encouraged their readers to side with the enemy. From the town of Barre (pronounced like the name "Barry") in Coolidge's own home state of Vermont, the anarchist Luigi Galleani published a newspaper called "Cronaca Sovvesiva," which advocated violence, until the Wilson Administration shut it down. The prevailing attitude was that platforms had to be controlled, as some voices advocate today. Later, consensus became that the Wilson Administration had overreacted in what was known as the Red Scare, and, too often, suppressed freedom here.

Coolidge himself never faced an issue exactly like today's conflict about liability and Section 230. But his record contains some evidence that he respected some aspects of both sides of your debate. In 1919, Coolidge was serving as governor of Massachusetts. In part inspired by the drama in Europe, Boston policemen broke their contract, which did not allow strikes, and walked off the job in September, 1919. With the police away, angry citizens and activists broke windows and looted the stores near the state house. As governor, Coolidge had to respond. Coolidge fired the policemen, saying "there is no right to strike against the public safety by anybody, anywhere, any time." When it came to media platforms, Coolidge believed that proprietors should be responsible for what happens on their property. He thought newspaper

⁶ Political Hysteria in America: The Democratic Capacity for Repression (1971), p. 31

⁷ "Preamble to the IWW Constitution". Industrial Workers of the World. Retrieved 2009-08-20.

editors and proprietors were so important he gave a speech at the American Society of Newspaper Editors. But in those very remarks Coolidge strongly defended freedom of speech, saying “Wherever the cause of liberty is making its way, one of its highest accomplishments is the guarantee of the freedom of the press.”⁸

Another interesting part of the Coolidge story is Harlan Fiske Stone, an acquaintance whom Coolidge knew from his days at Amherst College. Stone, who became dean at Columbia Law School, was critical of the excesses of the U.S. government during the period of censorship and repression. Stone argued publicly for academic freedom. Coolidge subsequently showed his respect for Stone’s record by making him attorney general and, later, naming him to the Supreme Court.⁹ Much later, in 1940, the Supreme Court heard a classic first amendment case about two children, Lillian and William Gobitis, whose faith did not allow them to salute the U.S. flag. The children therefore refused to salute in school, breaking the law of their state, Pennsylvania. Justice Stone was the only Justice to side with the Gobitis family. In his dissent Stone pointed out that forcing children to salute the flag against their religion violated the guarantees of the Bill of Rights to every citizen, especially free speech.¹⁰

⁸ Coolidge, Calvin. “[The Press Under a Free Government](#)” January 17, 1925.

⁹ Alpheus Thomas Mason “Harlan Fiske Stone: In Defense of Individual Freedom, 1918-1920,” Columbia Law Review, February, 1951.)

¹⁰ “[Minersville School District v. Board of Education](#)” U.S. Supreme Court. 310 U.S. 586 (1940)

KEY TERMS

Section 230 – A provision of the Communications Decency Act (CDA) of 1996. It stipulates that websites that host or republish their users’ speech are protected against being held legally responsible for what their users say and do. It ensures that websites such as Twitter, Facebook, and YouTube are seen as mere platforms, and not publishers. (There are exceptions for certain criminal and intellectual property-based claims, but by and large Section 230 protects platforms from liability.) One of the section’s authors is former congressman, Christopher Cox, from whom you will be getting a first-hand account of the crafting of the section at your debate.

Liability – The condition of being liable or answerable by law. In other words, the ability to be held responsible for something bad that happens. If you cause a car accident and it is determined that the accident was your fault, then you will be held liable (i.e., forced to pay for the damage to the other person’s car, their medical bills, and so forth).

First Amendment – The First Amendment of the U.S. Constitution states that Congress shall make no law abridging the freedom of speech. Note that it is a restraint on the power of government. The right to free speech is generally not interpreted as limiting private entities (such as schools, employers, and websites) from setting and enforcing their own rules regarding the speech of their students, employees, or users.

Online platform – A website, app, or other digital service that facilitates interactions and transactions between users. The “platform” is a metaphor for a stage. It is a space that has been prepared in such a way as to attracts users to come and use it. The people who made or built the platform are not the people publishing content or information on the platform.

Content Curation – The process of collecting information from a variety of users or sources, and then filtering and pruning it in a way that emphasizes some pieces of content while de-emphasizing, hiding, or excluding other pieces of content.

Network Effect – In economics, “network effect” refers to how the more users there are on a platform, the more the platform is worth. As an illustration, consider how little value there would be in owning the only telephone in the world. The value of one telephone increases the more telephones there are in existence. The same is true of users on social media platforms.

“Good faith” – Well-meaning in intention. Section 230 allows online platform companies to engage in certain editorial-like actions (such as removing obscene or violent content) as long as those actions are done *in good faith*, and not in an attempt to sidestep the intent of the law and act like a publisher.

AFFIRMATIVE ARGUMENTS

1. Social media platforms are publishers, like newspapers. Therefore, they should be liable for the things that happen on their platforms.

America has a long jurisprudential history of making newspapers responsible and liable for the content that they publish. As the Digital Media Law Project describes:

“Under standard common-law principles, a person who publishes a defamatory statement by another bears the same liability for the statement as if he or she had initially created it. Thus, a book publisher or a newspaper publisher can be held liable for anything that appears within its pages. The theory behind this ‘publisher’ liability is that a publisher has the knowledge, opportunity, and ability to exercise editorial control over the content of its publications.”¹¹

Just as newspapers have the knowledge, opportunity, and ability to control the content that they publish, so do online platforms. In the early days of the world wide web, perhaps it was defensible that social media companies had protection from liability because the algorithms for analyzing and filtering content were not very sophisticated. In those days, online platforms were more passive. All they did was serve as a gathering place for users to post text, images, videos, and other content. Today, however, platforms such as Facebook, Twitter, and YouTube run some of the most computationally sophisticated websites in the world.

The online platforms of today not only have the ability to manipulate content through their algorithms, filters, and recommendation engines—they actively exercise that ability. No major social media platform displays a simple chronological feed of content from the users that a given user “follows,” “subscribes to,” or is “friends” with. The platforms provide curated, published experiences.

Legal experts such as Olivier Sylvain of Fordham Law School argue that the courts are wrong to give companies protection under Section 230 because social media companies constantly manage their platforms and have become “ever more determinative of online conduct.”¹² These companies profit greatly from exercising this ability by creating “sticky” user experiences and optimizing the delivery of advertisements. Facebook alone made over \$18 billion in net income in 2019. (See Appendix C.) Modern online platforms are not starved for financial resources or software engineering expertise. They can afford to accept responsibility—and *they should*.

2. *Someone* needs to be held responsible of protecting users—it should be the companies.

As long as Section 230 protects online platforms from the legal repercussions of content that gets posted on those platforms, there is no reason or incentive for companies to monitor

¹¹ [“Immunity for Online Publishers Under the Communications Decency Act”](#) Digital Media Law Project. Accessed October 12, 2020.

¹² Caplan, Lincoln. [“Should Facebook and Twitter Be Regulated Under the First Amendment?”](#) *Wired*. October 11, 2017.

content for harmful or hateful speech. This leads to a mean and nasty online environment that can be dangerous for vulnerable users—including minors.

Companies need to act like responsible stewards of the tools and forums they have created. We would not look the other way if we witnessed a parent let a toddler grab a knife and run around with it. Nor would we look the other way if we witnessed a parent allowing a toddler to wander around the edge of a pool unsupervised. In these situations, we hold the parent responsible because it is the parent who has the power, knowledge, and ability to prevent the injury or the undesirable outcome.

Society already recognizes the need to hold companies liable for some types of content. For example, providers are liable if they fail to prevent users from posting copyrighted material or violate intellectual property rights in other ways.¹³ Repealing the rest of Section 230 is the next logical step in this evolution toward holding companies responsible for the content that appears on their online platforms.

Some legal experts believe we should reexamine Section 230 on the grounds of consumer protection:

“In view of recent abuses, it is worth considering whether to adopt some kind of user’s bill of rights, designed to protect against unwanted or unknowing disclosure of personal data. Prominent social media platforms already tell users how their information might be used, but those disclosures are not exactly transparent.”

Cass Sunstein, Harvard Law School. Quoted in [“Regulate Facebook and Twitter? The case is getting stronger”](#) Bloomberg. February 14, 2019.

3. Making online platforms liable for content on their sites would help to protect democracy.

When the Communications Decency Act was written 24 years ago, nobody could have predicted that online platforms would become as politically influential as they have become. No two things illustrate this better than 1) the unprecedented level of polarization in the United States at present, and 2) the level to which foreign governments can now interfere in our elections. Both these things threaten democracy in our nation; repealing Section 230 would help protect it.

First, Section 230 contributes to polarization by allowing social media companies to manipulate users’ content feeds to keep users glued to their devices at all costs. The more time that users spend looking at their feeds, the more money the companies make by selling advertisements. Unfortunately, social media companies know that the best way to keep people engaged is to serve them content similar to what they have seen and liked in the past. In politics, this results in Democrats seeing primarily what Democrats like, and Republicans seeing primarily what Republicans like. This reinforces a lack of critical thinking and balanced discussion. Opportunists

¹³ Morrison, Sara. [“Section 230, the internet free speech law Trump wants to repeal, explained”](#) Vox. October 6, 2020.

looking to get more views and likes take advantage of this by posting false and misleading information, polluting the public sphere and causing a social divide that hurts democracy.¹⁴

Second, unmoderated platforms give foreign governments a direct channel for communicating to Americans. This gives them an easy and inexpensive way to manipulate American voters during elections—something they never could have dreamed of doing in years past without risking getting caught by our government. Harvard law professor and former White House Administrator Cass Sunstein writes:

“Everyone now knows that foreign governments, most notably Russia, have been using social media aggressively to promote their interests. Before the 2016 election, Russian agents worked hard to divide Americans and influence their votes. They succeeded in reaching 126 million Facebook users—and they published more than 131,000 messages on Twitter. [F]oreign interference with the operations of our democracy is intolerable. Because other nations, and not only Russia, have a lot to gain and growing technological capabilities, the problem is likely to get worse.”¹⁵

Repealing Section 230 will protect democracy by forcing social media companies to invest in creating a better environment for speech, and by requiring them to take down content produced by foreign governments aimed at influencing our political system.

4. Repealing Section 230 will put pressure on social media platforms to be fairer and less biased against political opinions they don’t like.

It is no secret that Silicon Valley (the place in California where many large technology companies are headquartered) is at least somewhat biased towards progressivism and against conservatism.^{16,17,18} This bias shows up in the way that Facebook, YouTube, Twitter treat conservative content and content creators. These massive companies have suppressed, demonetized, or unfairly flagged conservative content, and they have disproportionately suspended or banned conservative content creators.

¹⁴ Goodman, Ellen. [“The First Amendment Opportunism of Digital Platforms”](#) The German Marshall Fund of the United States. February 11, 2019.

¹⁵ Sunstein, Cass. [“Regulate Facebook and Twitter? The case is getting stronger”](#) Bloomberg. February 14, 2019.

¹⁶ Manjoo, Farhad. [“Silicon Valley’s Politics: Liberal, With One Big Exception”](#) *New York Times*. September 6, 2017.

¹⁷ Ghosh and Scott, [“Why Silicon Valley tech giants can’t shake accusations of anticonservative political bias”](#) CNBC. October 17, 2018.

¹⁸ Chideya, Farai. [“Nearly All Of Silicon Valley’s Political Dollars Are Going To Hillary Clinton”](#) FiveThirtyEight. October 25, 2016.

Section 230 should be repealed because the companies that have benefited from it have not used their influence fairly. Or, at minimum, the provision should be reinterpreted to require that all decisions that companies make about content moderation be based on objectively reasonable beliefs and be made in good faith (i.e., applied honestly and evenly across all users), and not guided by their own political biases.¹⁹

Liability protection should not be given for acts of content removal that fail to meet the requirements of good faith management.²⁰ Repeal—or the above-described reinterpretation—of Section 230 could also include a new regulatory scheme under which the Federal Trade Commission could require social media companies to provide “periodic public reports” showing that they are being fair to their users, and requiring remedial steps if they are falling short.²¹

“Is Facebook a kind of monopoly? If so, should it be regulated as what economists call a ‘natural monopoly,’ which exists when the market can efficiently support only one supplier (as in the case of electric utility providers)? ... [T]he sheer size of the platform ... means that regulators need to consider, more carefully than they have done thus far, how antitrust law might apply to situations that were once unimaginable.”

Cass Sunstein, Harvard Law School. Quoted in [“Regulate Facebook and Twitter? The case is getting stronger”](#) Bloomberg. February 14, 2019.

Toward this end, on May 28, 2020, President Trump issued the following Executive Order. For a brief excerpt, see Exhibit 1.

Exhibit 1. Excerpt from Executive Order on Preventing Online Censorship

“Section 230 was not intended to allow a handful of companies to grow into titans controlling vital avenues for our national discourse under the guise of promoting open forums for debate, and then to provide those behemoths blanket immunity when they use their power to censor content and silence viewpoints that they dislike. When an interactive computer service provider removes or restricts access to content and its actions do not meet the criteria of subparagraph (c)(2)(A), it is engaged in editorial conduct. It is the policy of the United States that such a provider should properly lose the limited liability shield of subparagraph (c)(2)(A) and be exposed to liability like any traditional editor and publisher that is not an online provider.”²²

The Executive Order does not enact any immediate change to Section 230. Rather, it orders the National Telecommunications and Information Administration (NTIA) to work with the Federal Communications Commission (FCC) to clarify the scope of the law.

¹⁹ Brandom, Russell. [“Trump is drafting an order to regulate Facebook and Twitter for bias”](#) *The Verge*. August 9, 2019.

²⁰ Bambauer, Derek. [“Trump’s Section 230 reform is repudiation in disguise”](#) *Brookings STREAM*. October 8, 2020.

²¹ Sunstein, Cass. [“Regulate Facebook and Twitter? The case is getting stronger”](#) *Bloomberg*. February 14, 2019.

²² [“Executive Order on Preventing Online Censorship”](#) The White House. May 28, 2020

NEGATIVE ARGUMENTS

1. Social media platforms are like bookstores or bulletin boards, not newspapers. The Supreme Court ruled long ago that bookstores are not liable for the content of the books they sell.

Social media platforms *distribute* speech. They do not *produce* speech. While it is reasonable to hold a newspaper liable for the speech that it publishes, it is not reasonable to hold an online platform liable for the speech that users engage in while on that platform. Online platforms and social media companies are like a small-town bookstore. Customers come into the bookstore, browse, and choose to buy the books that they want. The owner of the bookstore should not be responsible for the speech content of every book in the store. Sure, bookstore owners might wish to exercise some discretion over which books to feature in their storefront windows—for instance most store owners would recognize that if they place something too controversial or distasteful in the store window, they might lose customers. But that sort of “editorial control” is metaphorical, and is not literally the same as the editorial control that a newspaper publisher has over the content of its articles.

“Distributor liability is much more limited. Newsstands, bookstores, and libraries are generally not held liable for the content of the material that they distribute.

“The concern is that it would be impossible for distributors to read every publication before they sell or distribute it, and that as a result, distributors would engage in excessive self-censorship.

“In addition, it would be very hard for distributors to know whether something is actionable defamation; after all, speech must be false to be defamatory.”

Source: “[Immunity for Online Publishers Under the Communications Decency Act](#)”
Digital Media Law Project. Accessed October 12, 2020.

The United States has already experimented with the idea of holding bookstore owners liable for the content of the books in their store. Back in the 1950s, for example, some bookstore owners were held liable for selling books that contained “obscene” speech (obscene speech is not protected by the First Amendment).

One case, *Smith v. California*, made it to the Supreme Court. The court held that the rights of the Los Angeles-based bookseller were in fact violated when he was convicted of breaking a city ordinance against the selling of books with “obscene” content. The court agreed that holding one person liable in this way for content produced by another person would have an inhibiting effect on free speech in general. Ever since then, bookstores have had the kind of protection that websites currently have under Section 230. To get rid of Section 230 for website would send us all back to where bookstores were in the 1950s. That would harm free speech.

2. Users use the Internet at their own risk.

Using the Internet is like driving on a public road. (Indeed, in the 1990s the Internet was often called “the information superhighway.”) Everyone knows and understands that there are risks associated with driving on a road. Yet everyone accepts that under ordinary circumstances if you hit another car, *you* are the one who is responsible, *not* the mayor of the town who built the road. Under Section 230, the same expectation is true with regard to online platforms, and it should stay this way.

Users who encounter speech that they dislike from other users should direct their displeasure at the creator of the speech, not the provider of the platform. Imagine a case in which one user posts false information about political candidate “A”, causing other users who see that information to vote for political candidate “B.” Users must be responsible for their own information diet and seek out that they know are trustworthy. Or, consider a different example in which a restaurant owner believes he has been defamed online by a user who has posted a false or fraudulent review on a site such as Yelp or YouTube. The restaurant can take that issue up with the user if he wishes, but the restaurant should not be able to sue Yelp or YouTube for damages. In both of these cases, something unfortunate occurred, but the company that provided the platform did nothing wrong.

3. Section 230 provides platform stability and certainty, which is critical for free speech.

Navigating the user content dilemma prior to the enactment of Section 230 in 1996 was not easy. Online platforms were faced with constant uncertainty. Some platforms decided that in order to avoid being classified as a publisher of content, the safest approach in terms of limiting their legal liability was to do no moderation at all of user content—even to get rid of the most vicious and false content. Having zero standards at all arguably creates an even more dangerous situation for users. Given the way the courts had decided the issue up until then, only if a platform adopted the “anything goes” model could it be sure that it would not be exposed to unlimited liability.²³

One of the co-creators of Section 230, Senator Ron Wyden, in a recent interview:

“What I was struck by then is that if somebody owned a website or a blog, they could be held personally liable for something posted on their site.

[...] “And I said then—and it’s the heart of my concern now—if that’s the case, it will kill the little guy, the startup, the inventor, the person who is essential for a competitive marketplace. It will kill them in the crib.”

Source: Morrison, Sara. [“Section 230, the internet free speech law Trump wants to repeal, explained”](#) Vox. October 6, 2020.

²³ Cox, Christopher. [“The Origins and Original Intent of Section 230 of the Communications Decency Act”](#) *Richmond Journal of Law and Technology*. September 2020.

Section 230 provides the predictability that platforms need in order to manage their risk. Former U.S. Representative Christopher Cox, one of the original authors of Section 230, and the speaker at our event, writes:

“By providing legal certainty for platforms, the law has enabled the development of innumerable internet business models based on user-created content. It has also protected content moderation, without which platforms could not even attempt to enforce rules of civility, truthfulness, and conformity with law.”²⁴

Under Section 230, social media platforms do not have to worry about being liable for their users because their users are the ones who are liable for themselves. We need not worry about the for-profit nature of the companies because what benefits them benefits the users of their platforms. President Coolidge made a related point decades ago in defending the right of newspapers to be profit-minded because he trusted them to use their power for good. In 1925, Coolidge wrote:

“Some people feel concerned about the commercialism of the press. They note that great newspapers are great business enterprises earning large profits and controlled by men of wealth. So they fear that in such control the press may tend to support the private interests of those who own the papers, rather than the general interest of the whole people. It seems to me, however, that the real test is not whether the newspapers are controlled by men of wealth, but whether they are sincerely trying to serve the public interests. There will be little occasion for worry about who owns a newspaper, so long as its attitudes on public questions are such as to promote the general welfare. A press which is actuated by the purpose of genuine usefulness to the public interest can never be too strong financially, so long as its strength is used for the support of popular government.”²⁵

To reiterate, Section 230 as it currently stands is the arrangement that best promotes free speech for everyone.

4. We do not need to worry about platforms being unfair to people with unpopular opinions, because in the age of the Internet, opportunities to speak are not scarce.

People who advocate eliminating Section 230 on the basis that online platforms are abusing their power when they unfairly suppress user content from certain political viewpoints, are themselves abusing the First Amendment. The First Amendment’s protection of free speech places a limit on what the government can do, not what platforms can do. It

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Source: [U.S. Constitution: Amendment I.](#)

²⁴ Ibid.

²⁵ Coolidge, Calvin. [“The Press Under a Free Government”](#) January 17, 1925.

might be unfortunate that Facebook, Twitter, YouTube, and other sites treat certain viewpoints unfavorably, but it does not constitute illegal censorship. Censorship is a concept that only applies to actions the government might try to take, not actions that private companies take.

Freedom of Speech is most important when opportunities to speak—which include channels such as radio, television, print, podcasts, billboards, social media, books, and more—are limited. One or two hundred years ago, when you needed a printing press to spread your ideas, freedom of speech was crucial for society, and it might have been justifiable to make regulations that ensure a certain amount of fairness. (Indeed, there have been times in American history when various types of “fairness doctrines” were enforced.²⁶)

Today, however, when practically anyone can publish content on the world wide web and have it be instantly available around the world, we do not need to police publishers. As Professor Tim Wu of Columbia University Law School put it, “It is no longer speech itself that is scarce, but the attention of listeners.”²⁷

Any attempt to eliminate Section 230 and either tell platforms what they must disseminate or make platforms more liable for what is disseminated on their sites would almost certainly lead to a major legal challenge.²⁸ On some platforms, it is not even realistic to expect companies to be able to moderate speech. (As Senator Ron Wyden, one of the architects of Section 230, said: “Because content is posted on their platforms so rapidly there’s just no way they can possibly police everything.”²⁹) Inviting the government to expand policing of the Internet or force platforms to moderate according to certain rules would be to invite an unpredictable outcome—an outcome that will likely chill speech.

²⁶ [“Fairness doctrine”](#) *Encyclopedia Britannica*. December 30, 2018. Accessed October 21, 2020.

²⁷ Wu, Tim. [“Is the first amendment obsolete?”](#) Knight First Amendment Institute at Columbia University. September 1, 2017.

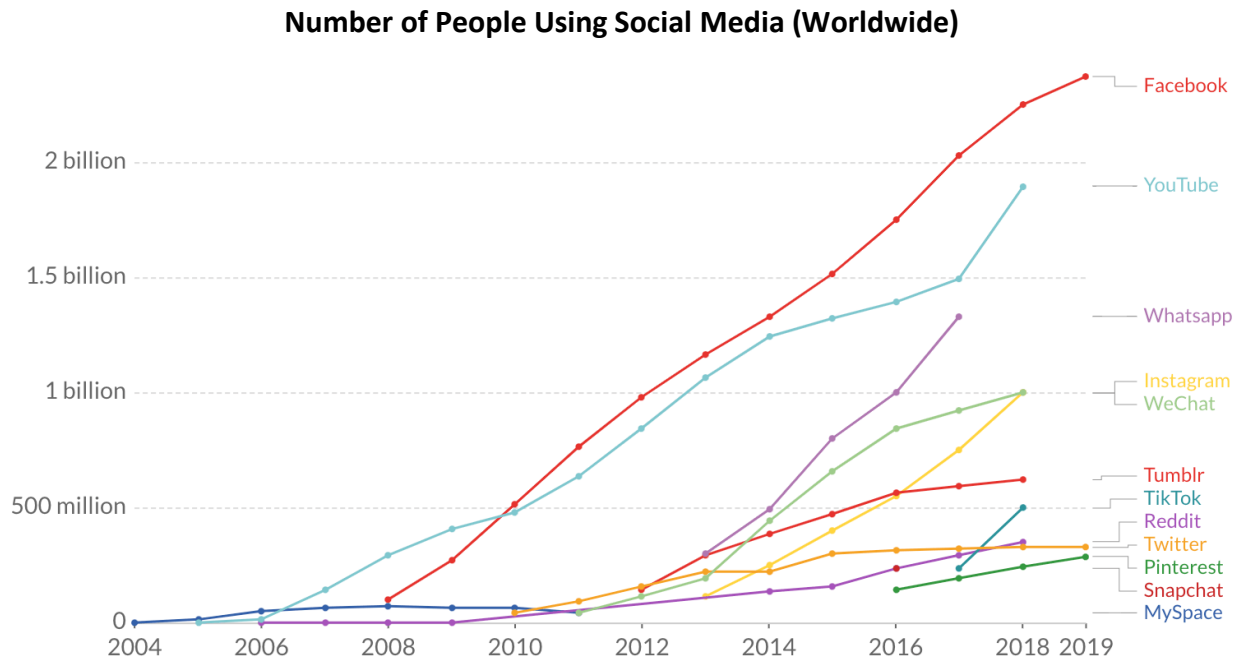
²⁸ Brandom, Russell. [“Trump is drafting an order to regulate Facebook and Twitter for bias”](#) The Verge. August 9, 2019.

²⁹ Brewster, Jack. [“Trump Points To Anecdotal Evidence Of Big Tech Bias As He Calls For Congress To ‘Repeal Section 230’”](#) *Forbes*. September 8, 2020.

APPENDIX A. Size and Growth of Social Media Platforms

With over two billion monthly active users (and a current world population of about 7.8 billion), Facebook can claim that more than one out of every four people on Earth are regular users of their social media platform. YouTube, owned by Alphabet (the restructured parent company of Google), is not far behind. There are even companies such as TikTok that have been around fewer than five years that can claim hundreds of millions of users. If the world's most populous country, China, were a social media platform, it would only be about the sixth largest platform.

This rate of growth is unprecedented in human history. Some economists praise and marvel at the ability of these companies to grow. Other economists worry that these platforms are too large and influential, and believe that they should be broken up or regulated by government.



The estimates above correspond to monthly active users (MAUs). This can be thought of as the number of users who have logged onto a given platform in the past 30 days. Source: [Statista](https://www.statista.com). Accessed October 5, 2020.

APPENDIX B. Valuations of Facebook and Twitter

Online platforms benefit greatly from Section 230. In 2012 and 2013, Facebook and Twitter went public (i.e., changed status from being owned by private investors to being publicly traded). Since then, both have seen their stock prices increase in value. The price of one share of Facebook's stock has seen steady growth, whereas Twitter's stock has been more volatile.

Historical Stock Price Charts



Source: *Yahoo Finance* stock quotes for ticker symbols [FB](#) and [TWTR](#). Accessed October 10, 2020.

APPENDIX C. Facebook's Income Statement

Facebook ranks first in annual revenues among social media companies. In the year 2019, the company brought in approximately \$70 billion in total revenues. After various expenses, such as paying its employees and income taxes, the company was left with a net income (i.e., profit) of about \$18 billion.

Income Statement

In millions, except percentages and per share amounts	Year Ended December 31,		Year-over-Year %	
	2019	2018	Change	
Revenue:				
Advertising	\$ 69,655	\$ 55,013	27	%
Other	1,042	825	26	%
Total revenue	70,697	55,838	27	%
Total costs and expenses	46,711	30,925	51	%
Income from operations	\$ 23,986	\$ 24,913	(4)	%
Operating margin	34 %	45 %		
Provision for income taxes	\$ 6,327	\$ 3,249	95	%
Effective tax rate	25 %	13 %		
Net income	\$ 18,485	\$ 22,112	(16)	%
Diluted earnings per share (EPS)	\$ 6.43	\$ 7.57	(15)	%

Source: "[Facebook Reports Fourth Quarter and Full Year 2019 Results.](#)"
Facebook Investor Relations. January 29, 2020.

APPENDIX D. The Importance of User-Generated Content

The Internet Association is an industry association representing some of the largest internet commerce companies and social media websites in the world. In 2019, they conducted a poll of 2,451 American adults, asking them what kind of content is most important in making purchasing decisions online. The types of content they named tended to be the types of content that are enabled by Section 230. This helps to illustrate the importance of Section 230 to the digital economy.

Most Americans Use Online Reviews



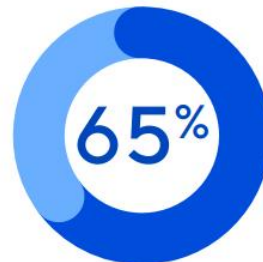
of respondents say they **check online reviews before buying products or going to restaurants** either “every time” or “most of the time”



of respondents say that it is “Extremely” or “Very” **important for a business to have good online reviews** before they patronize them



of respondents either strongly or somewhat agree that they “**would be less likely to buy things online**” without online reviews



of respondents answered 7 or higher on scale of 1-10 when asked **how much they trust online reviews** to give a good impression of a product, service, or restaurant

Source: “[Best Of The Internet: Consumers Rely On User-Generated Content.](#)”
Internet Association. June 25, 2019.