October 27, 2020

The Honorable Roger Wicker
Chairman
Committee on Commerce
Science & Transportation
United States Senate
Washington, DC 20515

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce
Science & Transportation
United States Senate
Washington, DC 20515

Dear Chairman Wicker, Ranking Member Cantwell, and Members of the Committee:

My name is Will Duffield, I am a policy analyst with the Cato Institute's Center for Representative Government. I would like to thank the Committee on Commerce, Science, and Transportation for convening this hearing on Section 230, on October 28, 2020, and for providing the opportunity to express my views regarding this topic.

Today you will have the opportunity to ask questions of Mark Zuckerberg, Sundar Pichai, and Jack Dorsey, the respective heads of Facebook, Google, and Twitter. These firms benefit tremendously from Section 230's protections. However, they are far from its only beneficiaries. Section 230 protects an internet ecosystem home to hundreds of thousands of platforms and services. The purpose of this internet ecosystem as explicated in Section 230's congressional findings is to "offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[1] Whatever the failings of specific platforms, the contemporary internet continues to fulfill this promise.

Crucially, this expectation was made of "the internet" as a whole. Specific platforms have always been expected to filter speech they considered offensive or off-topic. Section 230(c)(2) explicitly shields platforms from lawsuits over their moderation decisions. However, because 230(c)(1) forecloses most platform liability for user speech, new platforms may always be established to host legal speech unwanted elsewhere. The resultant ecosystem of large, more restrictive platforms and smaller services with niche focuses or speech policies too liberal to maintain at scale provides a home for almost all speech. Some speakers may not have the billing they feel they deserve, but all can reach willing listeners. Even those banned from major platforms have greater reach than they might have before the advent of the internet – to some, this, not overbroad content moderation, is the real danger.

Many proposed amendments, such as last weeks' "Protecting Americans from Dangerous Algorithms Act," which would hold platforms liable for algorithmically processed extreme speech, would result in less speech, not more. Section 230(c)(1) protects a diverse array of websites, from Ravelry, a community platform for knitters, to Armslist, a classified-ads section for firearms. Without it, smaller sites like these simply would not be able to operate. While larger platform might be able to invest in algorithmic filtering or fight meritless lawsuits in court, smaller platforms don't have the resources to fight off constant claims treating them as the speaker of their users' speech. Likewise, without Section 230(c)(2), they would be overrun

[1] 47 U.S.C. § 230(a)(3)

by off-topic submissions, spam, and scams. Even if well intentioned, or motivated by legitimate concerns about overbroad moderation, amending Section 230 is likely to make the internet less hospitable to speech.

Legislation intended to alter the practices of a handful of major platforms misses the forest for the trees. When determining if Section 230 has outlived its usefulness, don't think only of Twitter. How would Parler, a conservative alternative governed in accordance with the spirit, if not the letter, of the First Amendment, fare under your favored amendment? What about Mastodon, a fully decentralized Twitter clone hosted by its users?

Yes, Section 230, now more than twenty years old, protects mature firms. But it has always functioned as a ladder for new market entrants as well. The statute offers a single set of universal rules for platforms of all shapes and sizes. Nascent platforms seeking investment know that they will receive the same protections as existing firms. Section 230 ensures that, unlike in many other industries, there are no legal advantages to incumbency. Modifying it amounts to sawing off the ladder, denying future platforms the conditions under which everything from Myspace to Facebook grew.

Before amending Section 230, imagine what the internet ecosystem might look like today if the amendment under consideration had been implemented a decade ago. Would Twitch exist, or would we simply have YouTube Gaming? Could Gab have survived its use by the Tree of Life Synagogue shooter? Would we have Tiktok? Despite the controversy surrounding its ownership, it has quickly emerged as a real competitor to more established social media firms, providing a novel, video-first architecture capable of hosting expression, and highlighting the varied forms of American life, in ways that might not work on other platforms. How would alternatives to advertisement funded media, such as Patreon, Medium, or Substack, a budding subscription newsletter service, if they were made liable for every podcast or newsletter they host?

The internet is a not as static, nor as restrictive, as its varied critics claim. New platforms and services have already begun answering the concerns of major platform critics more effectively, and with less collateral damage, than can be hoped of any legislative action. Amendments to Section 230 intended to curb perceived content moderation abuses will likely limit speech in practice, and fall hardest on smaller and less mature platforms. Section 230 continues to protect an internet that, as a whole, lives up to its promise as a forum for diverse discourse recognized in 1996. Any thoughts of amendment should proceed from this salutary fact.

Sincerely,

/s/

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