

Social Media and Censorship

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Abstract

This paper will focus on the political and social complexities surrounding the Section 230 of the CDA debate. The purpose is to properly define freedom of speech and Section 230 to discuss its relationship to each other and its relationship to other surrounding issues/opinions. Section 230 was proposed in the early days of the internet in an attempt to incentivize internet companies to moderate their content while allowing their business models to flourish. For a while, this structure worked well until we reached the era of social media. Now, the contents of the Section 230 legislation cause much political strife. Where there once was a bipartisan agreement there is now division between liberals and conservatives. This paper concludes that Section 230 is out of date and is in much need of modification to be up to speed with the current political and social complexities.

Keywords: Section 230, social media, internet, Republican, Democrat, First Amendment

Social Media and Censorship

The issue of social media's relationship with censorship has been a long standing argument, especially in the political sphere. Many do not agree on the degree with which social media companies can and cannot control the messaging and posts that flood their pages daily. However, there is a consensus that social media, despite its benefits, has the potential to cause great harm if not moderated. Social media is a breeding ground for the spread of harmful speech, and misinformation that has the potential to incite violence and more. According to the Online Hate and Harassment Report done by the Anti-Defamation League, 41% of Americans who participated in their survey claimed that they had experienced online harassment (ADL, 2022). The act of censoring content on the internet presents two opposing arguments. Firstly, internet censorship works to prevent graphic or explicit content from being published and/or kept online. It makes attempts to reduce fake news so that we can make the best and most informed opinions. It also aids in the protection of your privacy by keeping your personal information from strangers. On the other side of the argument, some believe that censorship limits certain online freedoms in terms of what you can see and access on the internet. Herein lies the conflict. Who should control how content gets moderated? What should the laws be surrounding social media's relationship with censorship? Does censorship restrict your freedom of speech rights? All of these questions are in a mostly constant debate among lawmakers, politicians, and the public as it pertains to Section 230. Section 230 is a smaller part of the Communications Decency Act which explains the immunity afforded to social media companies to moderate content however they see fit. The implications of the law have caused social and political division. Lawmakers struggle to reach a middle ground when facing legislative proposals to amend Section 230. In this paper, I will describe the current argument surrounding censorship with a focus on an important piece of

legislation known as Section 230. There will be an initial section discussing the first amendment, what it is, and its implications on the complicated issue of internet censorship. Following will be an explanation of the application of the first amendment at the state level versus the federal level and what this means for social media entities. Next will be a description of the policy that social media organizations share to censor/moderate content leading to an introduction of Section 230. The bulk of the discussion will focus on the Section 230 legislation, what it proposes, the bipartisan argument surrounding it, and propositions suggested to modify the law. The final section will include my argument and concluding statements.

First Amendment – What Does This Mean for Rights?

The First Amendment provides that “Congress make no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances” (Whitehouse.gov, n.d.). The portion of the First Amendment that will be interpreted in this section is the right to freedom of speech. Through this amendment, we are given the right to express opinions without governmental restraint. One of the most complicated and heavily debated issues is what should be done about harmful speech on the internet. Research by Bollinger and Stone (2022) explains that “problematic language, including hate speech, disinformation, and propaganda have been around throughout human history. But, in recent decades, they have been amplified, and, most would agree, fundamentally transformed by the advent of the internet and the rise of social media” (Bollinger, 2023) In recent years, the threshold of freedom of speech has been tested to its limits, creating confusion amongst politicians as to what should be done. The extensive protections on speech by the First Amendment has complicated the journey towards solutions.

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However, social media organizations are not state actors, and this status allows them to evade some first amendment protections to create their own grounds for content moderation.

Free Expression at the State Level

Author Pinkus (2021) asserts that “The public seems to have a fundamental misunderstanding about the true extent of “freedom of speech” under the First Amendment” (Pinkus, 2021). Essentially, the first amendment’s provision of freedom of speech solely prohibits Congress from making laws that restrict this right. Moreover, Pinkus (2021) further describes that under the due process clause of the 14th Amendment, this protection is extended to states and local governments. However, under the State Action Doctrine, Pinkus (2021) explains that private entities do not have to abide by these amendment restrictions. Essentially, the government has the potential to violate your freedom of speech rights whereas a private organization does not. Because social media organizations are private entities, they have the right to censor content on their pages as they see fit.

Limits to Free Expression on Social Media

In the context of social media, there is a policy on the part of platforms to censor content. This is also known as content moderation or the process by which platforms detect content that they deem harmful or obscene and therefore fit for removal. These actions are completed in a way that is consistent with the terms that we sign when we agree to engage in these sites. Speech qualified as hate, obscenity, misinformation, or harassment differs in the ways that they are protected by the first amendment versus social media platforms. While the first amendment provides concrete legislation for each of these types of speech, social media companies can approach as they see fit. In a chart created by Nott and Peters (2022) comparing social media censorship policies to each other, the diagram signifies the spectrum of restrictions held by these

platforms. For example, in terms of obscenity, the platform known as Reddit allows users to post content including nudity or pornography as long as they are marked as such (Nott and Peters, 2022). The content in this chart is somewhat in line with the first amendment's protection of pornography from government censorship as they will not take down content simply for containing nudity as long as it is not considered obscene by their guidelines. However, on the opposite end of the spectrum, YouTube has no tolerance for any content containing nudity or pornography and will remove it from their platform upon posting for violating their guidelines (Youtube.com, n.d.).

Why do Social Media Platforms Have These Rights?

In the earlier years of the internet, Congress enacted a law known as Section 230. Section 230 is part of the 1996 Communications Decency Act. It was initially created in a wildly different political and social climate where matters of the internet were not so divisive or conflicting. Section 230 was created to “remove legal barriers that would disincentivize online services from moderating content and to encourage continued growth and development of the Internet in its early years” (Johnson & Castro, 2021). The goal of this legislation was to provide the means for social media platforms to moderate the content on their pages by removing harmful content while still encouraging healthy free speech. In its early days, the author of the Communications Decency Act, Senator James Exon’s driving goal was to remove “filth” from the growing and unknown internet business. However, much of the law was struck down under the terms of the first amendment. In a final effort, representatives Ron Wyden and Chris Cox decided to include Section 230 to preserve the internet’s potential economically and socially. Without this law, the internet would have faced many legal issues. Stemler (2021) states that “If they did anything to moderate user content, they would be held liable for that content, and if they

did nothing, who knew what unchecked horrors would be released” (Stemler, 2021). The items in Section 230 act as a ‘legal shield’ to content creators and the sites that host them.

What are the Legal Provisions it Protects?

Section 230 states that “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; EFF.org, n.d.). Essentially, Section 230 protects internet platforms from being held liable for the content their user’s post. It does not matter if the content is defamatory, obscene, or dangerous; anything the user decides to post will not be the fault of the host or social media organization. Further elaboration within the Section 230 provision states that “any action voluntarily taken in good faith to restrict access to or availability of [objectionable content]” (Johnson and Castro, 2021; 47 U.S.C. § 230(c)(1). In practice, the statute further protects social media organizations by granting them leeway to engage in content moderation as they see fit. They will not be held liable for enforcing their community guidelines. The statute protects against litigation as well as other immunities against “federal criminal law, intellectual property law, and the Electronic Communications Privacy Act” (Jurecic, 2022). Jurecic (2022) describes the significance of Section 230’s liability shield by outlining a court case held before the statute was in place. In 1991, the case known as *Cubby v. CompuServe* was held to decide whether CompuServe would be held liable for alleged defamatory posts made to its site. The court ruled in favor of CompuServe, holding that they were only “passively” hosting the information without moderating. They were not expected to search through and decipher the integrity and lawfulness of every piece of content. Years later, the ruling of this case was used to enforce liability on another company, Prodigy. Since Prodigy advertised a willingness to moderate its content, the court ruled that the company was to be held liable as a publisher. If

illegal content was posted, even without the company's knowledge, they were to be held responsible.

Why Does This Matter for Social Media

The provisions made by Section 230 have massive implications for the structure of the internet and the information that the public has access to. Social media organizations have the right to police the content on their pages at their will. Lerman (2022) put this simply when describing that companies do not have to “sift” through an excessive number of posts to ensure that they are not violating laws before they appear on their sites. Also, individuals can post whatever content they desire without fear of being reprimanded or being held legally responsible. Section 230 was designed with the intention of giving the means to platforms to moderate content. However, there are no guidelines, or no regulations set in place as to how they can or should do so. Therefore, companies remove content or keep content up as they see fit. Platforms control what information the public sees, which has been the source of much controversy.

Current Debate Surrounding Section 230

The debates involving Section 230 surround issues such as free expression/freedom of speech, content moderation, and the liability of social media companies. To introduce the basics of the argument, those for moderation suggest that social media platforms should be held responsible for controlling the content on their sites and those against it fear a suppression within the marketplace of ideas. The debates surrounding the statute go deeper than this general argument because it has become a largely political issue. In general, Section 230 is disliked by both sides, Democrat and Republican. Before the 2016 election Oremus (2022) describes that lawmakers on both sides desired to see the internet thrive. However, the election in 2016 “marked the beginning of the end of that bipartisan comity” (Oremus, 2022). Liberals and

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conservatives today have stark differences in viewpoints surrounding the statute and what they feel needs to change. Already, over 20 reforms have been introduced to try to change Section 230 (Stemler, 2021).

Pro-Moderation

Arguments for moderation suggest that social media platforms should be responsible for controlling potentially harmful content. As an example, in 2020, it was reported that the rioters who stormed the U.S. Capitol organized themselves via social media and even broadcast details of the insurrection on these platforms (Draper, 2022). Rising levels of disinformation and misinformation, hate speech, conspiracy theories and more harmful online activities have led to an increase in desire for social media platforms to moderate this content to protect the public and the integrity of the internet.

Anti-Censorship

Arguments against censorship suggest that increased moderation can lead to a suppression of innovation and freedom of expression. The provisions of the Section 230 legislation have been the foundation of the internet's growth and innovation. Some argue that government regulation could inadvertently hurt smaller websites from growing if they are constantly being held liable for content that is too substantial in amount for a startup site to regulate (kelley, 2020). Proponents of anti-censorship contest that the facilitation of free expression and communication throughout the internet should be of primary concern. This concern, in this argument, can only be satisfied by avoiding increased content moderation and censorship.

Liberal Opinion and How It Formed

The contents of the Section 230 legislation have also caused much political strife. Where there once was a bipartisan agreement there is now a division between liberals and conservatives. However, both share a dislike towards the provisions of Section 230. In general, liberals argue that the portion of Section 230 that eliminates the liability of social sites encourages the spread of harmful content. Oremus (2022) discussed that liberals also see a “link between online speech and real-world violence, making content moderation literally a matter of life and death.” To provide an example, the white supremacist movement found a home on social media sites utilizing platforms to organize people towards dangerous and at times deadly events. The “Unite the Right” rally was an example of such events in which one person died, many were injured, and a state of emergency was declared (Katz, n.d.). The violence further exacerbated the left’s opinions on the need for content moderation as they saw social media as a potential source for the incitement of violence. In combination with the potential to spread violence, liberals feel that there is an incessant spread of misinformation (Draper, 2022). Talks about rigged elections by Trump to rally his base, conspiracy theories about the Covid-19 pandemic, and even vaccines urged Democrats to feel as though Section 230 allowed harmful speech to slip through the cracks and influence public opinion.

Conservative Opinion and How It Formed

On the opposite side of the argument, conservatives disagree with the second provision of the Section 230 legislation that allows content providers to not be held liable for practicing moderation as they see fit (Oremus, 2022). They believe that this statute allows for unfair censorship of majority conservative opinions, violating their rights to freedom of speech. Republicans have been known to blame social platforms, such as Facebook and Twitter, for “over-censoring” their posted views and opinions. The events that occurred amongst Silicon

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Valley tech companies were an example that emphasized Republicans' opinions on the matter. Furthermore, the ban of Trump from huge social sites like Twitter and suspensions by Facebook and YouTube showed the power that social sites yield to censor what they deem necessary. Republicans feel as if there is biased action against them by social media organizations and therefore see a need for the revision or even the elimination of Section 230.

Polarizing Opinions Exacerbated by Facebook

In May 2016, it was alleged by the right that Facebook's liberal employees were engaging in an act of biased suppression by removing conservative news. Right-leaning outlets were being censored from Facebook's "Trending" section on their page. To clean up the mess, Mark Zuckerberg, Facebook's CEO, made his rounds with conservative leaders to apologize for the bias on behalf of his employees. He even went as far as to fire those involved and required training in bias to prove his commitment to truth. Author Oremus (2022) discussed that in 2017, liberals felt as if Facebook and other social media platforms aided in the election of former president Trump and urged for a more dedicated censoring of fake news.

Modifications of Section 230

What once was an industry that was well enjoyed and trusted was now collectively thought of as an uncontrollable and unorganized mass that needed to be controlled, checked, and reconsidered. There is sharp criticism from both sides of the political sphere regarding Section 230. Democrats feel that more restriction is needed. Republicans feel that too much restriction and censorship are being imposed. Many changes have already been proposed on both ends of the spectrum, some alluding to a complete revoking of the Section 230 legislation (Reardon, 2020). Tech giants like Facebook and Google have also taken the liberty of suggesting changes to the legislation. Oremus (2022) describes that the "first big blow" to Section 230 occurred in

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2018 when a bipartisan bill passed by Congress and signed into law by Trump got rid of the ‘liability shield’ towards sites that facilitated online sex trafficking. This action was well-liked by both Democrats and Republicans as these sites, instead of facing lawsuits, collectively shut down; one step closer towards a safer internet. There are many ways in which republicans and democrats would like to see Section 230 modified that even include bipartisan approaches.

Democratic Proposals

President Joe Biden said that he would favor revoking Section 230 all-together. Aside from Biden, the whole of democrats wish to see a reform of Section 230. Overall, they feel that amendments to the legislation should be limited to ensure that freedom of speech is maintained. Considering the democrats specific issue focus as previously described, they prefer to see Section 230 reformed to increase liability on behalf of social media sites for content like “hate speech, targeted harassment and drug dealing” (Reardon, 2020). They fear companies using the legal immunity provided by Section 230 to circumvent any action towards removing false content online.

Republican Proposals

Senate Republicans have proposed amendments that would involve a scaling back of the Section 230 provisions that allow internet companies to hide behind legal immunity. In May 2020, Trump followed suit with this desire and issued an executive order that would eliminate this ‘legal cloak’ held by internet companies. This was called the Executive Order on Preventing Online Censorship (Trumpwhitehouse.archives.gov, 2020). Trump believed that big tech companies are against him and argued that they largely censor conservative views while they ‘masquerade’ as neutral. Trump’s executive order takes a clear position against this law and urges other federal agencies like the Federal Communications Commission, Federal Trade

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Commission, and Department of Justice to go by the understanding he laid out. The executive order was split into four sections. The first section introduces the belief by Trump that social networks are being selective in what they choose to censor. Specifically, he felt that some social networks have acted on a particular bias towards conservative viewpoints. Furthermore, in Section 2, he argued that the “scope” of Section 230 should be altered to not extend the ‘liability cloak’ to those sites who engage in selective censorship. In this section, he urged for the provision to not be distorted to, “provide liability protection for online platforms that — far from acting in “good faith” to remove objectionable content” (Trumpwhitehouse.archives.gov, 2020). In Section 3 of the executive order, Trump ordered that a new system be set in place to ensure that federal money is not being used to fund sites that engage in the restriction of free speech. In practice, each executive department would perform a review of each department’s spending including the amount spent and the platforms being funded. In Section 4 of the executive order Trump urges the FTC to take actions towards the prohibition of unfair censorship. Sections 5 and 6 include an outline for the Attorney General to organize efforts towards the completion and function of this plan in terms of federal legislation. Biden ultimately revoked the order, but it still fueled the Republican drive to curb biased censorship.

Bipartisan Approach

There are certain modifications and proposals that have received support from both sides of the aisle. One act that modified a provision of the Section 230 legislation includes the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA). President Trump signed this into law in 2018 with a desire to curb online sex trafficking. This bill worked to bypass the liability portion of the Section 230 legislation by removing legal protection from any sites that “knowingly assist, support, or facilitate” (Jurecic, 2022) illegal sex trafficking activity on their

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platforms. This bill received almost equal support from both chambers of congress in passing. It was a law that was able to alter the provisions of Section 230 and remain well liked by both democrats and republicans. Another example of a bipartisan approach taken by lawmakers includes the proposition of the EARN IT act (Reardon, 2020). Otherwise known as the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act, this piece of legislation was proposed to amend Section 230's legal protections. More specifically, it would make child sexual abuse content illegal on both the state and federal level despite Section 230's protections. Despite major concerns and lobbying against both pieces of legislation, they still provide for examples consistent with Section 230 modifications that favor both democrat and republican opinions. This law was passed unanimously by the Senate Judiciary Committee in 2022 (Blackburn Senate, 2022).

Department of Justice Opinions

The Department of Justice came out with a series of modification proposals following the executive order put out by Trump. Their proposals suggest a dramatic scaling back of Section 230. However, it is just a proposal and would require it to be heard and passed by congress to become a law. The two big areas of concern are as follows; (1) The proposal discusses moderation practices that they deem limit speech and (2) it addresses the lack of consequence for the spread of harmful content online. Furthermore, the Department of Justice laid out four areas that they claim to be "ripe for reform" (Justice.gov, n.d.). The first section outlines reforms they suggest would be beneficial in incentivizing online platforms to check and moderate illicit content on their platforms. In this section they provide a reminder that Section 230 includes an immunity provision that provides "Protection for 'good Samaritan' Blocking and Screening of Offensive Material" (Justice.gov, n.d.). They emphasize that no platform should

be exempt from civil liability if they engage in the hosting of illicit content. Section two of the Department of Justice's document describes a reform that would clarify that immunity does not apply to civil enforcement actions, therefore improving the ability for the government to increase prevention of illicit conduct. Section 3 of the provision aims to clarify that Section 230 does not include federal antitrust claims. It mentioned: "it makes little sense to enable large online platforms to invoke Section 230 immunity in antitrust cases, where liability is based on harm to competition, not on third-party speech" (Justice.gov, n.d.). Lastly, Section 4 described a greater need to promote transparency and create a more open discourse. Essentially, this section puts an emphasis on the original purpose of the Section 230 legislation by urging for a redefining and clarification of its certain provisions. As an example, they describe that there should be a change of vague terminology like "otherwise objectionable" to terms like "unlawful" or "promotes terrorism." This proposal would create clearer grounds for content providers to be more intentional about what should be removed.

Conclusion and Discussion

Stemler (2021) provides an interesting perspective by describing that "When Section 230 was enacted, less than 8% of Americans had access to the internet, and those who did went online for an average of just 30 minutes a month" (Stemler, 2021). As described earlier, Section 230 was created in a climate where the propensity for all forms of negative speech was lower. The country was in a less divisive state, and the media was not often used for or accused of controlling narratives for a motive. Now, as America has become characterized by an extremely polarized political climate, especially in a highly digital environment, there are new ways rights can be potentially violated. More specifically, some argued that freedom of speech is being tested by Section 230 and that some of the provisions outlined in the legislation do not do a good

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enough job of protecting the integrity of the internet as a safe yet free space. So much has changed since the signing of Section 230 and many of the protections laid out are severely out of date. This is a scary reality as many companies and sites rely on the provisions laid out by this legislation to decide how to run their platform/business. A plethora of online platforms have arisen to become giant companies with huge implications on the national economy and social wellbeing.

It is undeniable that social media provides a plethora of social benefits. It fosters community and allows for the connection of people across barriers, such as geography and even language. However, if not properly checked social media can quickly become the cause of devastation and a source for the spread of graphic, illicit, or obscene content. Because of its negative potential, it is imperative that updated legislation be created to better define the limits of social media while still promoting free speech. The cost that posts on social media can have on society has been severely underestimated. The current law, Section 230, is out of date and is in much need of modification to be up to speed with the current political and social complexities. Certain terms and provisions are in much need of clarification and further defining.

The debates surrounding Section 230 have been at opposite ends of the spectrum with one side calling for increased restriction and the other calling for less. In some instances, others claim that Section 230 be left alone. Under Section 230, internet businesses have been able to flourish economically with ample flexibility and freedom. Without the legal protections that Section 230 provides, social-media platforms would have been under constant legal scrutiny that could have been detrimental to company growth and innovation. Section 230 provides a decent foundation for the internet to prosper, but certain aspects of the legislation remain too vague. More specifically, the vague wording in certain parts of the legislation creates space for social

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media platforms to do as they please sometimes at the expense of overall safety and fairness. Some platforms are not incentivized to protect a “brand” image by strictly policing content. In fact, some do not feel the need to police content at all as Section 230 statute gives them legal leeway to do so.

Any modifications to Section 230 should be done in a very careful and deliberate way to not impose too many restrictions or create an environment of no consequences. Lawmakers must unanimously decide upon specific clarifications and further definitions to be added to the law. Currently, lawmakers are pushing for amendments to Section 230 that could augment liability protections afforded to social media companies. It is imperative that work be done to specifically further define the terms of the Section 230 statute to reduce some flow of dangerous content online. There may be a middle ground that can be created to satisfy both qualifications. A necessary first change to the statute would include specific clarifications that increase transparency and safety. Terms in the provision need to be better defined. A clear and comprehensible description should be developed to define what qualifies as a ‘Good Samaritan’ screening of material. A clear definition of “good faith” should be added as well to clearly define what can and cannot be done in accordance with the law. These definitions are too vague and create a loophole for content providers who host illicit content. Furthermore, harmful content that is illegal at the state level should be able to be addressed at the federal level. Section 230 prevents social media companies from receiving enforcement from the federal government, but some issues should be heard at this level. In line with this, federal law should be expanded to encompass a wider array of illicit activities. Lastly, the “or otherwise objectionable” clause should be removed and amended to increase specificity as to how content providers should be held liable. Specific and agreed upon-standards should be set in place instead to limit harmful

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content or biased censorship. These are just a few examples of ways in which Section 230 should be limited to create a safer internet space while protecting first amendment rights to free speech. Navigating freedom of speech is tricky, but we should not sacrifice safety, legitimacy, and peace for its sake.

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