

Section 230 Brief

January, 2024

Resolved: The United States federal government should repeal Section 230 of the Communications Decency Act.



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Basic Affirmative Case

Carded AFF

We affirm the resolution.

Sole Contention: Democrat Support

There is bipartisan support for a repeal, but Democrats have a stronger plan on how to enact concrete reforms, rather than just get rid of 230's advantages entirely. This means that they will have more support in the 2024 elections as reform is widely popular.

Section 230 repeal/reform is bipartisan

Fung 23'

"Senators warn Big Tech on Section 230: 'Reform is coming'" Brian Fung, March 8, 2023

<https://www.cnn.com/2023/03/08/tech/senators-section-230-reform/index.html>

US senators said Wednesday that **bipartisan support is growing for revising** a federal immunity law for tech platforms and websites known as **Section 230** of the Communications Decency Act, a warning **aimed** squarely **at large social media platforms**.

Democrats want reform, Republicans want outright repeal

Bambauer 21'

"What does the day after Section 230 reform look like?" Derek E. Bambauer, January 22, 2021

<https://www.brookings.edu/articles/what-does-the-day-after-section-230-reform-look-like/#:~:text=Democrats%20and%20Republicans%20are%20deeply,enough%20to%20quash%20harmful%20misinformation.>

One Democratic proposal, floated by Reps. Anna Eshoo and Tom Malinowski in the aftermath of the attack, would limit Section 230 protections for content that encourages civil rights abuses or terrorism.

A bipartisan proposal authored by Democratic Sen. Brian Schatz and Republican Sen. John Thune is aimed at encouraging transparency and consistency in platform content moderation decisions.

Democrats and Republicans are deeply divided on their reasons for reforming the law: **Republicans want to strip Section 230 protections** because social media companies moderate too much content;

Democrats want it reformed because platforms aren't doing enough to quash harmful misinformation.

Platforms thus face the Goldilocks problem: They can neither remove nor host too much content, but must get their curation exactly right to satisfy both camps.

A majority of Americans support having some form of Section 230

McClain 21'

"56% of Americans oppose the right to sue social media companies for what users post" COLLEEN MCCLAIN, JULY 1, 2021

<https://www.pewresearch.org/short-reads/2021/07/01/56-of-americans-oppose-the-right-to-sue-social-media-companies-for-what-users-post/>

Some **56% of U.S. adults say people should not be able to sue social media companies for content that other users post on these companies' platforms**, according to a new survey conducted April 12-18, 2021. At the same time, 41% say people should be able to do this. **A majority of Americans say people should not be able to sue social media companies for content posted on these platforms by other users** The right to sue social media companies in this way is one issue at the heart of current debates surrounding Section 230 of the Communications Decency Act, which some lawmakers argue should be amended or repealed.

Democrats are more inclined to bring reform

Kelly 21'

"Democrats take first stab at reforming Section 230 after Capitol riots" Makena Kelly, Feb 5, 2021

<https://www.theverge.com/2021/2/5/22268368/democrats-section-230-moderation-warner-klobuchar-facebook-google>

The SAFE TECH Act, introduced by Sens. Mark Warner (D-VA), Amy Klobuchar (D-MN), and Mazie Hirono (D-HI), would overhaul Section 230 to the Communications Decency Act, a law that protects large tech platforms from liability over the content posted by their users. **The Democrats' bill would open new pathways for users to sue companies if content posted on their platforms threatens them personally** with harassment, discrimination, or other forms of abuse. The **bill also prohibits Section 230 from applying to ads or other paid content on platforms**, targeting a large source of revenue for companies like Facebook and Google.

A majority of Americans support having some form of liability protection. Democrats are historically more inclined to want reform, unlike Republicans who want outright repeal. This means that if Section 230 is repealed, Democrats will have a stronger plan to replace these protections and they will therefore have more support. Democrats want more loopholes that make companies liable in certain instances, but they still want liability protection for these companies, which is very popular. This means that when Section 230 is repealed, there will be a lot of uncertainty, but Democrats will provide a solution or another plan with similar protections.

On the other hand, Republicans will do nothing because they want no protections. This is less popular, meaning that more people will support democrats.

The impact is twofold.

The first impact is climate change

Cunningham 12'

"Climate Change causing 400,000 deaths per year" Nicholas Cunningham, Sep 27, 2012

<https://www.americansecurityproject.org/climate-change-causing-400000-deaths-per-year/#:~:text=The%20human%20cost%20is%20also,economy%202.5%25%20of%20GDP%20annually.>

The human cost is also huge. An estimated **400,000 people die each year due to hunger and diseases related to climate change. By 2030, the death toll is expected to rise to 700,000 per year, and cost the global economy 2.5% of GDP annually.** Moreover, in addition to climate change, the current pollution-intensive energy system exacts further damage: 4.5 million annual deaths due to air pollution, indoor smoke, occupational hazards and cancer.

Democrats are more likely to promote change

Kennedy 20'

"More Americans see climate change as a priority, but Democrats are much more concerned than Republicans" BY BRIAN KENNEDY AND COURTNEY JOHNSON FEBRUARY 28, 2020

<https://www.pewresearch.org/short-reads/2020/02/28/more-americans-see-climate-change-as-a-priority-but-democrats-are-much-more-concerned-than-republicans/>

A growing share of Americans say addressing climate change should be a top priority for the president and Congress, **but most of the change has come among Democrats.** Over the past four years, the share of Americans who say dealing with global climate change should be a top priority has increased from 38% to 52%. **Among Democrats and independents who lean to the Democratic Party, 78% say climate change should be a top priority.**

The Second is abortion

Bose 23'

“Abortion rights center stage in Democrats’ 2024 US election campaign” Nandita Bose September 1, 2023

<https://www.reuters.com/world/us/democrats-push-abortion-rights-heart-2024-campaign-2023-09-01/>

Abortion rights helped Democrats stave off a hefty defeat at midterm elections last year and the party aims to put the issue at the center of the 2024 fight for the White House. As Republican candidates propose new measures to restrict abortions and Republican-led states roll out tighter controls, President Joe Biden's re-election campaign last week released a new ad titled "These Guys", part of a \$25 million campaign focused on women in key battleground states.

Abortion bans kill

Spitzer 22’

“Abortion Bans Will Result in More Women Dying” Elyssa Spitzer, November 2, 2022

<https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/>

Researchers have found that **if abortion is banned throughout the United States, the overall number of maternal deaths would rise by 24 percent. This number is even worse for Black women, whose deaths would rise by 39 percent.**

Thus, we affirm.

Paraphrased AFF

We affirm the resolution.

Resolved: The United States federal government should repeal Section 230 of the Communications Decency Act.

Contention 1: Democrat Support

There is bipartisan support for a repeal, but Democrats have a stronger plan on how to enact concrete reforms, rather than just get rid of 230's advantages entirely. This means that they will have more support in the 2024 elections as reform is widely popular.

Section 230 repeal/reform is bipartisan. Fung 23' bipartisan support is growing for revising Section 230, aimed at large social media platforms.

Democrats want reform, Republicans want outright repeal. Bambauer 21' One Democratic proposal, floated by Reps. Anna Eshoo and Tom Malinowski in the aftermath of the attack, would limit Section 230 protections for content that encourages civil rights abuses or terrorism. Republicans want to strip Section 230 protections, Democrats want it reformed.

A majority of Americans support having some form of Section 230. McClain 21' 56% of U.S. adults say people should not be able to sue social media companies for content that other users post on these companies' platforms, A majority of Americans say people should not be able to sue social media companies for content posted on these platforms by other users.

Democrats are more inclined to bring reform. Kelly 21' The SAFE TECH Act, introduced by Sens. Mark Warner, Amy Klobuchar, and Mazie Hirono would overhaul Section 230 to the Communications Decency Act. The Democrats' bill would open new pathways for users to sue companies if content posted on their platforms threatens them personally. The bill also prohibits Section 230 from applying to ads or other paid content on platforms.

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The first impact is climate change. Cunningham 12' 400,000 people die each year due to hunger and diseases related to climate change. By 2030, the death toll is expected to rise to 700,000 per year, and cost the global economy 2.5% of GDP annually.

Democrats are more likely to promote change. Kennedy 20' A growing share of Americans say addressing climate change should be a top priority but most of the change has come among Democrats. Among Democrats and independents who lean to the Democratic Party, 78% say climate change should be a top priority.

The Second is abortion. Bose 23' Abortion rights helped Democrats stave off a hefty defeat at midterm elections last year and the party aims to put the issue at the center of the 2024 fight for the White House. As Republican candidates propose new measures to restrict abortions and Republican-led states roll out tighter controls, President Joe Biden's re-election campaign last week released a new ad titled "These Guys", part of a \$25 million campaign focused on women in key battleground states.

Abortion bans kill. Spitzer 22' if abortion is banned throughout the United States, the overall number of maternal deaths would rise by 24 percent. This number is even worse for Black women, whose deaths would rise by 39 percent.

Thus, we affirm.

Basic Negative Case

Carded NEG

We negate the resolution.

Sole Contention: Chaos

Subpoint A → Internet Disruption

Much of the internet's platform-based infrastructure was built in reliance of the immunity conferred by Section 230. Changing that now would be disastrous.

The free and open internet as we know it couldn't exist without Section 230.

Electronic Frontier Foundation '23

Staff. "Section 230 Primer." The Electronic Frontier Foundation, Nov. 2023

<https://www.eff.org/issues/cda230>

The free and open internet as we know it couldn't exist without Section 230. Important court rulings on Section 230 have held that users and services cannot be sued for forwarding email, hosting online reviews, or sharing photos or videos that others find objectionable. It also helps to quickly resolve lawsuits cases that have no legal basis. Congress knew that the sheer volume of the growing Internet would make it impossible for services to review every users' speech. When Section 230 was passed in 1996, about 40 million people used the Internet worldwide. By 2019, more than 4 billion people were online, with 3.5 billion of them using social media platforms. In 1996, there were fewer than 300,000 websites; by 2017, there were more than 1.7 billion. **Without Section 230's protections, many online intermediaries would intensively filter and censor user speech, while others may simply not host user content at all. This legal and policy framework allows countless niche websites, as well as big platforms like Amazon and Yelp to host user reviews. It allows users to share photos and videos on big platforms like Facebook and on the smallest blogs. It allows users to share speech and opinions everywhere, from vast conversational forums like Twitter and Discord, to the comment sections of the smallest newspapers and blogs.**

Websites that rely on user-generated content require Section 230 immunity.

Sean **Morrison '23**

Morrison, Sean. "Section 230, the internet law that's under threat, explained." Vox, Feb 23, 2023, <https://www.vox.com/recode/2020/5/28/21273241/section-230-explained-supreme-court-social-media>

Section 230 says that internet platforms hosting third-party content are not liable for what those third parties post (with a few exceptions). **That third-party content could include things like a news outlet's reader comments, tweets on Twitter, posts on Facebook, photos on Instagram, or reviews on Yelp. If a Yelp reviewer were to post something defamatory about a business, for example, the business could sue the reviewer for libel, but thanks to Section 230, it couldn't sue Yelp. Without Section 230's protections, the internet as we know it today would not exist. If the law were taken away, many websites driven by user-generated content would likely go dark.** A repeal of Section 230 wouldn't just affect the big platforms that seem to get all the negative attention, either. It could affect websites of all sizes and online discourse.

A lack of immunity would be unworkable.

Sean Morrison '23

Morrison, Sean. "Section 230, the internet law that's under threat, explained." Vox, Feb 23, 2023, <https://www.vox.com/recode/2020/5/28/21273241/section-230-explained-supreme-court-social-media>

You may have never heard of it, but Section 230 of the Communications Decency Act is the legal backbone of the internet. The law was created almost 30 years ago to protect internet platforms from liability for many of the things third parties say or do on them. **This protection has allowed the internet to thrive.** Think about it: **Websites like Facebook, Reddit, and YouTube have millions and even billions of users. If these platforms had to monitor and approve every single thing every user posted, they simply wouldn't be able to exist. No website or platform can moderate at such an incredible scale, and no one wants to open themselves up to the legal liability of doing so.** On the other hand, a website that didn't moderate anything at all would quickly become a spam-filled cesspool that few people would want to swim in.

Impact: UGC is the core of the internet.

Forbes Advisor '23

Haan, Katherine. "Top Website Statistics For 2023" Forbes Advisor, Feb 14, 2023, <https://www.forbes.com/advisor/business/software/website-statistics/>

Nearly 150 billion visitors reached the top five websites this year, and all of them were UGC sites, notably Google, YouTube, Facebook, Twitter/X, and Instagram.

This data demonstrates that UGC is the primary driver of internet traffic, and is what most people look for when online. A repeal of 230 effectively destroys these sites, which make up the internet's core and are vital mediums of information. (note: visitors is best defined as each day a unique user visits is one visit)

Subpoint B → The Court System

Currently, courts are backlogged. Section 230 allows for the prompt dismissal of frivolous lawsuits, which prevents the issue from getting worse.

Courts are bursting at the seams – they don't have enough resources.

Vicki **Hyatt '18**

Hyatt, Vicki. "Clogged courts." The Mountaineer, 21 May 2018.

https://www.themountaineer.com/news/clogged-courts/article_124a3478-5aa8-11e8-bfcb-b350ba1f7cf0.html

If the justice system were compared to a hose, courts would be the clog that backs everything up.

Some who work in the system would argue there's been a major breach with leaked water spewing everywhere. Haywood County Sheriff Greg Christopher said that **arrests are going up, but the justice system can't increase its capacity to handle a greater case load, so it can be easy for things to get backed up.** "There are days where we have as many as 400 cases on a court docket in district court," he said. "There is no way you can get through even probably 10 percent of those in a day's time."

"Resources within the criminal justice system need to be expanded to take care of the expanding number of cases," Waynesville Police Chief Bill Hollingsed said. "The clerk told me they have the same number of superior court days that we had 25 years ago. Have the cases expanded? Are we seeing an increasing number of cases? Obviously so. But we've got to deal with that increasing number of cases in the same number of court days with the same number of ADAs we've had all along."

Justice is being delayed or denied.

UTPB '18

"How the Shortage of Officers and Judges Affects Criminal Justice." The University of Texas Permian Basin,

<https://online.utpb.edu/about-us/articles/criminal-justice/how-the-shortage-of-officers-and-judges-affects-criminal-justice/>

To quantify recent judge shortages, take as an example federal courts, which had more than 715,000 cases on their docket in the summer of 2021. That's an increase of nearly 20% over the number of cases just one year prior and a 36% increase over the number of cases from five years earlier. Yet the same number of judges presided over all these cases. **No new federal judges are likely to be seated before 2025, and state and local courts coast to coast are similarly facing a shortage of judges. Such shortages lead to a backlog of court cases, which can force complainants and defendants to wait longer for justice to be served. Judges may also be inclined to dismiss more cases to lighten their caseload or speed up individual cases, potentially denying the involved parties a full and fair hearing.** What's to be

done about these problematic staffing shortfalls? Unfortunately, there's no fast or easy fix. Systemic issues such as police accountability, poor working conditions, and budgetary concerns will need to be addressed to attract skilled candidates. While our society progresses toward a more effective and equitable criminal justice system, the field needs additional qualified personnel, making the employment opportunities for those with the right skills and credentials plentiful.

Repealing Section 230 would make this worse with an influx of frivolous lawsuits.

Aaron Terr '23

Terr, Aaron. "Why repealing or weakening Section 230 is a very bad idea." Fire, 20 Feb. 2023, <https://www.thefire.org/news/why-repealing-or-weakening-section-230-very-bad-idea>

Section 230 doesn't just protect platforms from liability for unlawful content created by others: It also facilitates the prompt dismissal of frivolous lawsuits, often in cases that don't even involve unlawful speech. Without Section 230, many of these lawsuits would still cause platforms major headaches by requiring them to engage in extensive discovery and pretrial motions.

Impact: Frivolous lawsuits cost American taxpayers.

PRI '23

Winegarden, Wayne and Kerry Jackson. "Americans Pay \$1,300 'Tort Tax,' Fixing Legal System Would Grow Economy by 2 Percent." Pacific Research Institute 12 July 2023, <https://www.pacificresearch.org/americans-pay-1300-tort-tax-fixing-legal-system-would-grow-economy-by-2-percent/#:~:text=The%20PRI%20study%20cites%202021,state%2C%20and%20local%20tax%20revenue>

Americans pay a "tort tax" of \$1,300 per person thanks to lawsuit abuse, and reforming the legal system could boost the U.S. economy by 2 percent over time, finds a new study released today by California-based, nonpartisan, free-market think tank, the Pacific Research Institute. "Frivolous lawsuits reduce economic opportunities, jobs, and tax revenues while increasing costs for all Americans," said the study's co-authors Dr. Wayne Winegarden and Kerry Jackson. "As our study shows, policymakers can help grow the economy, reduce inflation, and boost tax revenue by embracing reforms to end lawsuit abuse." **The PRI study cites 2021 research from the Perryman Group estimating that the full costs to the U.S. economy from lawsuit abuse is 4.24 million lost jobs, \$429.35 billion in lost economic output, and more than \$110 billion annually in lost federal, state, and local tax revenue.** Winegarden and Jackson calculate that this is a "tort tax" of \$1,300 per person.

Thus, we negate.

Paraphrased NEG

We negate the resolution, Resolved: The United States federal government should repeal Section 230 of the Communications Decency Act.

Our sole contention is Chaos.

Subpoint A: Internet Disruption

Much of the internet's platform-based infrastructure was built in reliance of the immunity conferred by Section 230. Changing that now would be disastrous.

The free and open internet as we know it couldn't exist without Section 230. Electronic Frontier Foundation '23 states that "without 230's protections, many online intermediaries would intensively filter and censor user speech, while others may simply not host user content at all. This legal framework allows countless websites, including big platforms like Amazon and Yelp to host user reviews. It allows users to share photos/videos on big platforms like Facebook and on the smallest blogs, and it allows users to share speech and opinions everywhere, from forums like Twitter and Discord, to the comment sections of the smallest newspapers and blogs."

Websites that rely on user-generated content require Section 230 immunity. Morrison '23 states that "This third-party content [can] include things like tweets on Twitter, posts on Facebook [or Instagram], or reviews on Yelp. If a Yelp reviewer were to post something defamatory about a business, for example, the business [can] sue the reviewer for libel, but thanks to 230, it [can't] sue Yelp. Without 230's protections, the internet as we know it would not exist. If the law [is] taken away, many websites driven by user-generated content [will] likely go dark."

A lack of immunity would be unworkable. Morrison '23 continues, saying "This protection [allows] the internet to thrive. Websites like Facebook, Reddit, and YouTube have millions and even billions of users. If these platforms had to monitor and approve every single thing [that each] user posted, they simply wouldn't exist. No platform can moderate at such an incredible scale, and no one wants to open themselves up to the legal liability of doing so."

The impact is that UGC is the core of the internet. Forbes Advisor '23 states that "Nearly 150 billion visitors reached the top five websites this year [alone], and all of them were UGC sites, notably Google, YouTube, Facebook, Twitter/X, and Instagram."

This data demonstrates that UGC is the primary driver of internet traffic, and is what most people look for when online. A repeal of 230 effectively destroys these sites, which make up the internet's core and are vital mediums of information.

Subpoint B: The Courts

Currently, courts are backlogged. Section 230 allows prompt dismissals of frivolous lawsuits, which prevents the issue from getting worse.

Courts are bursting at the seams – they don’t have enough resources. Hyatt ’18 states that “If the justice system were a hose, courts would be the clog that backs everything up. Arrests are going up, but the justice system can’t increase its capacity to handle a greater caseload, so it[’s easy] for things to get backed up. Resources need to be expanded to take care of the [growing] number of cases.”

Justice is being delayed or denied. UTPB ’18 states that “No new federal judges are likely to be seated before 2025, and courts coast to coast are facing a shortage of judges. Such shortages [creates] a backlog of cases, which [forces] complainants and defendants to wait longer for justice to be served. Judges may also be inclined to dismiss more cases to lighten their caseload or speed up individual cases, potentially denying the involved parties a full and fair hearing.”

Repealing 230 would make this worse with an influx of frivolous lawsuits. Terr ’23 states that “230 doesn’t just protect platforms from liability for content created by others: It also facilitates the prompt dismissal of frivolous lawsuits, [which] often don’t even involve unlawful speech. Without 230, many of these lawsuits would still cause platforms major headaches by requiring them to engage in extensive discovery and pretrial motions.”

The impact is that frivolous lawsuits cost American taxpayers. PRI ’23 states that “Americans pay a “tort tax” of \$1,300 per person thanks to lawsuit abuse, and research [estimates] that the full cost to the U.S. economy from lawsuit abuse is 4.24 million lost jobs, \$429.35 billion in lost economic output, and more than \$110 billion annually in tax revenue.”

Thus, we negate.

Super Affirmative Case

Carded SuperAFF

U.S. Department of Justice

DEPARTMENT OF JUSTICE'S REVIEW OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996. U.S. Department Of Justice. U.S. Department of Justice,

<https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996>. Accessed 5 Jan. 2024.

- As part of its broader review of market-leading online platforms, the U.S. Department of Justice analyzed [Section 230 of the Communications Decency Act of 1996](#), which provides immunity to online platforms from civil liability based on third-party content and for the removal of content in certain circumstances.

Columbia Human Rights Law Review

<https://hrlr.law.columbia.edu/hrlr/fosta-in-legal-context/>

- In the spring of 2018, Congress passed the Allow States and Victims to Fight Online Trafficking Act of 2017 (FOSTA), which combined a House bill of the same name with provisions from a Senate bill, the Stop Enabling Sex Traffickers Act (SESTA).^[1] FOSTA as passed makes changes to three federal statutory schemes: the Communications Decency Act (Section 230)

Decriminalize Sex Work

"WHAT IS SESTA/FOSTA?" Decriminalize Sex Work,

<https://decriminalizesex.work/advocacy/sesta-fosta/what-is-sesta-fosta/#:~:text=SESTA%2FFOSTA%20refers%20to%20a,Communications%20Decency%20Act%20of%20199>

6. Accessed 12 Jan. 2024.

- SESTA/FOSTA amends Section 230 by **suspending its protection in cases where online platforms are perceived to be promoting prostitution.**
- **Online providers can now be held liable for posts perceived to be advertising sex on their sites.** State law enforcement can prosecute these cases at their discretion.

U.S. Congress

United States, Congress, Congressional Research Service. U.S.-Mexico-Canada (USMCA) Trade Agreement. CRS Reports, U.S. Congress, 5 Sept. 2023,

<https://crsreports.congress.gov/product/pdf/IF/IF10997#:~:text=approved%20by%20the%20House%20of,a%20vote%20of%2089%2D10.&text=January%2029%2C%202020%3A%20USMCA%20signed,116%2D113>. Accessed 12 Jan. 2024.

- **January 29, 2020: USMCA signed into law** (P.L. 116-113).
- **July 1, 2020: USMCA entered into force.**

Office of the United States Trade Representative

United States-Mexico-Canada Agreement. Office of the United States Trade Representative,

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement#:~:text=The%20USMCA%2C%20which%20substituted%20the,grow%20the%20North%20American%20economy>. Accessed 12 Jan. 2024.

- The United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA, which substituted the North American Free Trade Agreement (NAFTA) is a mutually beneficial win for North American workers, farmers, ranchers, and businesses. The Agreement creates more balanced, reciprocal trade supporting high-paying jobs for Americans and growing the North American economy.

Cornell Law School, Legal Information Institute

Communications Decency Act. United States Code, title 47, section 230. Legal Information Institute, Cornell Law School,

<https://www.law.cornell.edu/uscode/text/47/230>. Accessed 12 Jan. 2024.

- **(e)EFFECT ON OTHER LAWS**
 - **(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.

The US Government Accountability Office

Sex Trafficking: Online Platforms and Federal Prosecutions. June 2021. Government Accountability Office, <https://www.gao.gov/assets/gao-21-385-highlights.pdf>. Accessed 12 Jan. 2024.

- In June 2020, the DOJ brought one case under the criminal provision established by section 3 of FOSTA for aggravated violations involving the promotion of prostitution of five or more people or acting in reckless disregard of sex trafficking. As of March 2021, restitution had not been sought or awarded. According to DOJ officials, prosecutors have not brought more cases with charges under section 3 of FOSTA because the law is relatively new and prosecutors have had success using other criminal statutes. Finally, in November 2020 one individual sought civil damages under a number of constitutional and statutory provisions, including section 3 of FOSTA. However, in March 2021, the

court dismissed the case without awarding damages after it had granted defendants' motions to dismiss.

Berkeley Technology Law Journal

"A USER'S GUIDE TO SECTION 230, AND A LEGISLATOR'S GUIDE TO AMENDING IT (OR NOT)." Berkeley Technology Law Journal, vol. 37, no. 2, 2022, p. 757,

<https://lawcat.berkeley.edu/record/1257873/files/37-2-Full-Issue-r-2-9.pdf>. Accessed 12 Jan. 2024.

- Within days of FOSTA's passage, online classified ad site Craigslist removed its entire personal ad section. "Any tool or service can be misused," the site wrote. "We can't take such a risk without jeopardizing all our other services, so we have regretfully taken craigslist personals offline. Hopefully we can bring them back some day."188 Personals ads serve a wide range of lawful purposes. But because they potentially could be misused by sex traffickers—and the scope of liability under FOSTA was unknown—Craigslist made the risk-based decision to remove the entire personal ads section.
- FOSTA's enactment—along with the FBI's seizure of Backpage a few days before FOSTA was signed into law189—reduced the availability of platforms for sex workers. The lack of online platforms has reportedly driven many sex workers to bars or streets, increasing the danger that they face.190 After conducting an online survey of ninety-eight sex workers, Danielle Blunt and Ariel Wolf concluded that FOSTA "has created an environment where marginalized populations are pushed into increased financial insecurity, which, in turn, makes

them more vulnerable to labor exploitation and trafficking in the sex industry.”¹⁹¹

A 2021 Columbia Human Rights Law Review article summarized the impacts of FOSTA:

- The result is that people in the sex trades, who work in legal, semilegal, and criminalized industries, have been forced into dangerous and potentially life-threatening scenarios. Many no longer have access to affordable methods of advertising and have returned to outdoor work or to in-person client-seeking in bars and clubs, where screening of the type that occurs online is impossible, and where workers are more vulnerable to both clients and law enforcement. These effects have been most impactful on sex workers facing multiple forms of marginalization, including Black, brown, and Indigenous workers, trans workers, and workers from lower socioeconomic classes, who are prohibited from or unable to access more expensive advertising sites that may not be as impacted by FOSTA.

“Burden and correlates of mental health diagnoses among sex workers in an urban setting,” **Nitasha Puri**

Puri, Nitasha et al. "Burden and correlates of mental health diagnoses among sex workers in an urban setting." BMC women's health vol. 17,1 133. 19 Dec. 2017,

doi:10.1186/s12905-017-0491-y,

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5735638/#:~:text=Among%20692%20sex%20workers%2C%20338,and%20bipolar%20disorder%20\(10.3%25\).](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5735638/#:~:text=Among%20692%20sex%20workers%2C%20338,and%20bipolar%20disorder%20(10.3%25).)

- Among 692 sex workers, 338 (48.8%) reported having ever been diagnosed with a mental health condition. Depression was the most common self-reported mental health diagnosis (35.1%), followed by anxiety (19.9%), post-traumatic stress disorder (PTSD) (12.7%), and bipolar disorder (10.3%).

WHYY, Liz Tung

Tung, Liz. "FOSTA-SESTA was supposed to thwart sex trafficking. Instead, it's sparked a movement." WHYY, PBS/NPR, 10 July 2020,

<https://why.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-it-s-sparked-a-movement/> Accessed 13 Jan. 2024.

- "What we found was that a lot of people were doing sex work because they had this diagnosis previously," Blunt said. "And their mental health problems were making it difficult for them to hold a 9-to-5 job and that they needed flexibility to work around these issues."

DeAngelo, Cunningham, Tripp, Tulane University

Cunningham, Scott, et al. Craigslist's Effect on Violence Against Women. Nov. 2017.

Tulane University, https://www2.tulane.edu/~economic/seminars/DeAngelo_Craigslist.pdf.

Accessed 13 Jan. 2024.

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1359&context=dltr>

- Evans and Owens (2007) estimate the police-murder elasticity to be -0.84, which implies a police force employment increase of 20 percent.²⁹ We calculate the size of this counterfactual police force expansion using data from the 2001 LEOKA data (the

year prior to ERS opening in the San Francisco Bay area), and aggregate the number of police and the size of the population. That gives us 1,003,441 total police employment, 289,627,938 population in 2001, and the number of police per 100,000 equalling 346.5. To find the number of additional police, we increase the police per 100,000 by 20 percent which gives us 415.8 police per 100,000, or 1,204,273 employed police officers, **an increase of 200,832 police officers. Assuming an annual outlay of \$100,000 per officer, reducing female homicides by 17.4 percent would cost society an additional \$20 billion per year using higher levels of police employment. Craigslist ERS, in other words, saved 2,150 female lives at profoundly lower social cost.**

Cornell Law School, Legal Information Institute

"Injunction." Legal Information Institute, Cornell Law School,

<https://www.law.cornell.edu/wex/injunction>. Accessed 13 Jan. 2024.

- An injunction is a court [order](#) requiring a person to do or cease doing a specific action. There are three types of injunctions: [Permanent injunctions](#), [Temporary restraining orders](#) and [preliminary injunctions](#).

Harvard Law School's Cyberlaw Clinic

CDA 230 Goes North American? Harvard Law School Cyberlaw Clinic, 7 July 2020.

SSRN,

<https://deliverypdf.ssrn.com/delivery.php?ID=81807811506610710500006712011912412212704003802707500402708700700912403011809411810905000601904210505801>

[8091096091075118006029117037004023036114123074115104086084065025053041112091121005080119087090010002086009068118027125010010116004005079115092028027&EXT=pdf&INDEX=TRUE](https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1458&context=elj). Accessed 13 Jan. 2024.

- There is, however, one very significant textual difference between the two provisions. CDA 230(c) bars all causes of action against a platform that treat it as the “publisher(s) or speaker(s)” of information hosted on an online platform, whereas Article 19.17.2 simply prevents platforms and users from being held liable as an “information content provider[.]” As a result, CDA 230(c) prohibits courts both from imposing liability or granting equitable relief (such as restraining orders and injunctions) against a platform for content created and uploaded by platform users. By contrast, the text of Article 19.17.2 suggests that it only bars findings of liability against platforms in such situations, yet leaves open the possibility of equitable remedies.

Emory Law Journal, Danielle Keats Citron

Citron, Danielle Keats. "Privacy Injunctions." *Emory Law Journal*, vol. 71, no. 5, 2022.

Emory University,

<https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1458&context=elj>.

Accessed 13 Jan. 2024.

- A cornerstone of civil rights cases is injunctive relief. Injunctive relief has safeguarded important rights by stopping entities from continuing discriminatory practices and requiring them to redesign structures that impede equality

- Injunctive relief is crucial for what it will say and do for victims and the groups to which they belong. As Rachel Bayefsky has argued, a crucial remedial task for courts is to “express respect for [people’s] dignity.” A plaintiff’s dignity is violated when they have been “treated as though [they do] not adequately matter; . . . excluded from a relevant social group; and . . . exposed in compromising ways.” Remedies express respect for a plaintiff’s dignity when they send “the message that the plaintiff occupies a status higher than that of someone who could rightfully be treated in the way the defendant treated the plaintiff.” And they express respect for a plaintiff’s dignity when they “require[] the defendant to act in the manner that would be warranted if the defendant had viewed the plaintiff with respect.”
- Dignity-expressing remedies are “an appropriate response to a legal violation that imposes dignitary harm,” with such violations including “discriminat[ion] against members of a group based on a stigmatized trait” and “undue exposure, as with violations of privacy.” They “can take effect through a court’s order to a defendant to take some action or to refrain from taking some action.”

{Additional}

D’Amico, Elisa J. "SECTION 230 IMMUNITY PROTECTS YELP FROM INJUNCTION ORDER TO REMOVE DEFAMATORY POSTS." K&L Gates, 3 July 2018, <https://www.klgates.com/Section-230-Immunity-Protects-Yelp-from-Injunction-Order-to-Remove-Defamatory-Posts-07-03-2018>. Accessed 13 Jan. 2024.

- Both the superior court and Court of Appeal had ordered Yelp — a nonparty — to remove reviews that were determined by the court to be defamatory. The plurality decision, penned by Chief Justice

Cantil-Sakauye, reversed, holding that Yelp was protected against this sort of “removal order” by the Communications Decency Act of 1996 (47 U.S.C. § 230 (“Section 230”)).

{Additional}

Attorney Hugh Stephens 21

Stephens, Hugh. "Will Article 19.17 of the USMCA/CUSMA Influence Canadian Court Proceedings?

(The Long—or Short?—Arm of Section 230)." Hugh Stephens Blog, 15 Mar. 2021,

<https://hughstephensblog.net/2021/03/15/will-article-19-17-of-the-usmca-cusma-influence-canadian-court-proceedings-the-long-or-short-arm-of-section-230/>. Accessed 13 Jan. 2024.

- The precise language of Article 19.17 [of the USMCA] is also interesting because, unlike Section 230, it does not limit access to injunctive relief. It does not exclude the issuance of injunctions, or court-ordered equitable relief whereas Section 230 has been interpreted to prevent the issuance of injunctions against internet intermediaries.

Paraphrased SuperAFF

We affirm the resolution, Resolved: The United States federal government should repeal Section 230 of the Communications Decency Act.

Overview:

There are three main things to be aware of for this debate: Section 230, FOSTA/SESTA, and the USMCA.

First, [Section 230](#) of the Communications Decency Act provides internet sites civil liability protection on third-party content uploaded to the sites and for removing content.

Second, The Fight Online Sex Trafficking Act, or [FOSTA](#), amended Section 230, [specifically](#) removing these protections from sites that host sex-related content.

Finally, The US-Mexico-Canada Agreement, or [USMCA](#), [replaced](#) the North American Free Trade Agreement (NAFTA) in 2020.

It is important to clarify what affirming does in the real world. When you repeal Section 230, [Article 19.17](#) of the USMCA still remains in effect, and it requires U.S. courts to maintain 230-like protections. Because of this, repealing Section 230 changes *virtually nothing* regarding liability protections. However, there are two key changes that will activate when 230 is repealed and the USMCA becomes the sole law of the land; FOSTA, and injunctions.

Contention 1: Protecting the marginalized

First, FOSTA. According to the [Cornell Law](#), FOSTA amended 230 to exclude sex work-related websites from the protections that it offered. A 230 repeal would remove the entirety of Section 230, including the FOSTA amendments. Although FOSTA itself is an independent act with other components, any portions specific to 230 are automatically removed as there is nothing left to amend. Removing the FOSTA exceptions is good, as FOSTA failed at reducing online sex trafficking, while at the same time harmed the most marginalized. [The US Government Accountability Office](#) reports that only one case was ever filed under FOSTA up to 2022, and even that case was dismissed. The law itself is never used for prosecution.

On the other hand, the FOSTA exception caused online spaces for sex workers to disappear, pushing the sex work industry underground. [Berkeley Technology Law Journal '22](#) explains that within days of FOSTA's passage, Craigslist removed its entire personal ad section, because it was worried about being held liable since personal ads could be misused by sex workers. Similarly, other sites, including Twitter, Reddit, Instagram, and Google, followed by banning similar services. The impact is that marginalized people were made more vulnerable to violence and sex trafficking. [Berkeley '22](#) continues that the lack of online platforms has driven sex workers to bars or streets, increasing the danger that they face.

The people in the sex trades, who work in legal, semilegal, and criminalized industries, have been forced into dangerous and life-threatening scenarios. Many no longer have access to affordable advertising, and have returned to outdoor work or in-person

client-seeking in bars and clubs, where workers are more vulnerable to both clients and law enforcement. These effects have been most impactful on sex workers facing multiple forms of marginalization, including Black, brown, and Indigenous workers, trans workers, and workers from lower socio-economic classes who are unable to access more expensive advertising sites that may not be impacted by FOSTA. Furthermore, sex workers with mental health problems are especially exposed to more violence. [Puri '17](#) finds that almost 50% of sex workers have mental health problems, and [Tung '20](#) continues that these “mental health problems [made] it difficult for them to hold a 9-to-5 job” thus keeping them in the sex work industry.

[DeAngelo '17](#) quantifies the impact of the lost online spaces, stating that working through safer electronic platforms helped lower the female homicide rate by 17.4 percent, or the level that would be achieved through hiring more than 200,000 police officers, which would cost \$20 billion. Craigslist [alone], in other words, saved thousands of female lives at [a] profoundly lower cost.

Contention 2: Injunctions

An injunction is a court order requiring a person/entity to do or stop doing a specific action.

And this is where the USMCA differs from Section 230. The USMCA version of the liability protections does not include 230's limit on injunctions. Currently, under 230, sites do not need to comply with injunctions, but with the USMCA, sites must comply.

[Harvard Law School's Cyberlaw Clinic](#) reveals that “Section 230(c) prohibits courts both from imposing liability or granting equitable relief ([like] restraining orders and injunctions) against internet sites. By contrast, the text of Article 19.17.2 suggests that it only bars findings of liability against sites, meaning courts can grant injunctions and sites must comply with them.

The impact is ensuring fundamental human dignity. [Citron '22](#) writes that a cornerstone of civil rights cases is injunctive relief, which has safeguarded important rights by stopping entities from continuing discriminatory practices and requiring them to redesign structures that impede equality. Dignity-expressing remedies are “an appropriate response to a legal violation that imposes dignitary harm,” with such violations including “discriminat[ion] against members of a group based on a stigmatized trait” and “undue exposure, as with violations of privacy.”

Thus we affirm.

Super Negative Case

Carded SuperNEG

U.S. Department of Justice

DEPARTMENT OF JUSTICE'S REVIEW OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996. U.S. Department Of Justice. U.S. Department of Justice,

<https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996>. Accessed 5 Jan. 2024.

- As part of its broader review of market-leading online platforms, the U.S. Department of Justice analyzed [Section 230 of the Communications Decency Act of 1996](#), which **provides immunity to online platforms from civil liability based on third-party content and for the removal of content in certain circumstances.**

U.S. Congress

United States, Congress, Congressional Research Service. U.S.-Mexico-Canada (USMCA) Trade Agreement. CRS Reports, U.S. Congress, 5 Sept. 2023,

<https://crsreports.congress.gov/product/pdf/IF/IF10997#:~:text=approved%20by%20the%20House%20of.a%20vote%20of%2089%2D10.&text=January%2029%2C%202020%3A%20USMCA%20signed,116%2D113>. Accessed 12 Jan. 2024.

- **January 29, 2020: USMCA signed into law** (P.L. 116-113).
- **July 1, 2020: USMCA entered into force.**

Office of the United States Trade Representative

United States-Mexico-Canada Agreement. Office of the United States Trade Representative,

<https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement#:~:text=The%20USMCA%2C%20which%20substituted%20the.grow%20the%20North%20American%20economy>. Accessed 12 Jan. 2024.

- The United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA, which substituted the North American Free Trade Agreement (NAFTA) is a mutually beneficial win for North American workers, farmers, ranchers, and businesses. The Agreement creates more balanced, reciprocal trade supporting high-paying jobs for Americans and growing the North American economy.

Bambauer '21

Bambauer, Derek E. "What does the day after Section 230 reform look like?" Brookings, 22 Jan. 2021,

<https://www.brookings.edu/articles/what-does-the-day-after-section-230-reform-look-like/>.

Accessed 13 Jan. 2024.

- The first and most predictable effect of a diminution of Section 230 will be a wave of litigation. Aggrieved social media users and enterprising plaintiffs' attorneys will challenge platforms' decisions to leave up or take down content, to ban or restrict users, and to label posts as inaccurate or disputed. Conservative activists have already begun suing sites such as YouTube and Twitter to challenge

restrictions on their accounts based on posting fake news. To date, these claims have failed. But unhappy users will re-litigate existing theories and try out new ones to compel platforms to remove or replace content. The increase in lawsuits will only gather steam if state legislatures are now authorized to draft and pass regulations, as North Dakota has already shown. This development will be helpful in at least one way: It will gradually clarify the boundaries of post-230 safeguards, such as firms' terms of service, in enabling platforms to engage in content curation. However, it will be expensive and protracted.

Kelley '20

Kelley, Jason. "Section 230 is Good, Actually." Electronic Frontier Foundation, 3 Dec. 2020, <https://www.eff.org/deeplinks/2020/12/section-230-good-actually>. Accessed 13 Jan. 2024.

- Now that a few companies have grown to contain a vast majority of user-generated online content, it's essential that newer, smaller companies be given the same chance to host speech that those companies had fifteen or twenty years ago. Without Section 230, competition would be unlikely to succeed, because the liability for hosting online content would be so great that only the largest companies could survive the cost of (legitimate or illegitimate) lawsuits that they would have to fight. Additionally, though automated content moderation isn't likely to succeed at scale, companies who could afford it would be the only ones who could attempt to moderate. We absolutely still need

Section 230. In fact, we may need Section 230 even more than when we did in 1997.

Nabil '21

Nabil, Ryan. "Why Repealing Section 230 Will Hurt Startups and Medium-Sized Online Businesses." Competitive Enterprise Institute, 1 Feb. 2021,

<https://cei.org/blog/why-repealing-section-230-will-hurt-startups-and-medium-sized-online-businesses/>. Accessed 13 Jan. 2024.

- Only the largest tech companies—equipped with teams of lawyers and deep pockets—can afford to fight such a wave of litigation. Smaller firms may just remove more user-posted material or cease to host third-party content altogether to avoid court costs. By deterring small and medium-sized companies from hosting third-party content, this repeal will further entrench Big Tech's market dominance and protect them from future competition.

ITIF '17

Wu, John, and Robert D. Atkinson. "How Technology-Based Start-Ups Support U.S.

Economic Growth." Information Technology & Innovation Foundation, 28 Nov. 2017,

<https://itif.org/publications/2017/11/28/how-technology-based-start-ups-support-us-economic-growth/>. Accessed 13 Jan. 2024.

- Technology-based start-ups make up 2.8 percent of all U.S. firms.
- As a share of all technology-based employment, jobs in start-up firms increased from 31 percent to 33 percent.

Firm Characteristics	Tech-Based Start-Ups	Typical Start-Ups
Examples of Businesses	Biotech, IT products or services	Restaurants, laundromats
Growth Path	Large potential for significant employment and revenue growth	Addition of few jobs in first few years, then bankruptcy
Job Creation	Tend to employ more high- and semi-skilled workers	Tend to employ more semi- and low-skilled workers
Wages	Pays more than twice the national median wage	Pays less than the national median wage
Job Multipliers	Creates up to five indirect jobs in other industries	Creates little to no net new jobs
R&D Investments	Invests heavily in R&D	Little to no R&D investment
Trade	Focused on trade with international markets	Sells predominately in local markets

Statista '23

Statista Research Department. "Tech sector as a percentage of total gross domestic product (GDP) in the United States from 2017 to 2022." Statista, 15 Nov. 2023,

<https://www.statista.com/statistics/1239480/united-states-leading-states-by-tech-contribution-to-gross-product/#:~:text=In%202022%2C%20the%20United%20States,GDP%20has%20remained%20relatively%20consistent>. Accessed 13 Jan. 2024. Chart.

- In 2022, the United States tech sector contributed nearly two trillion U.S. dollars to the country's overall gross domestic product (GDP), making up approximately 9.3 percent of total GDP. Since 2018, the tech sector's yearly percentage of total GDP has remained relatively consistent.

IMF

Claessens, Stijn, and M. Ayhan Kose. "Recession: When Bad Times Prevail."

International Monetary Fund,

<https://www.imf.org/external/pubs/ft/fandd/basics/recess.htm>. Accessed 13 Jan. 2024.

- They typically last about a year and often result in a significant output cost. In particular, a recession is usually associated with a decline of 2 percent in GDP. In the case of severe recessions, the typical output cost is close to 5 percent.

Stucke '18

Stucke, Maurice E. "Here Are All the Reasons It's a Bad Idea to Let a Few Tech Companies Monopolize Our Data." Harvard Business Review, 27 Mar. 2018,

<https://hbr.org/2018/03/here-are-all-the-reasons-its-a-bad-idea-to-let-a-few-tech-companies-monopolize-our-data>. Accessed 13 Jan. 2024.

- Lower-quality products with less privacy. Companies, antitrust authorities increasingly recognize, can compete on privacy and protecting data. But without competition, data-opolies face less pressure. They can depress privacy protection below competitive levels and collect personal data above competitive levels. The collection of too much personal data can be the equivalent of charging an excessive price. Data-opolies can also fail to disclose what data they collect and how they will use the data. They face little competitive pressure to change their opaque privacy policies. Even if a data-opoly improves its privacy statement, so what? The current notice-and-consent regime is meaningless when there are no viable competitive alternatives and the bargaining power is so unequal.
- Surveillance and security risks. In a monopolized market, personal data is concentrated in a few firms. Consumers have limited outside options that offer better privacy protection. This raises additional risks, including:
 - Government capture. The fewer the number of firms controlling the personal data, the greater the potential risk that a government will "capture" the firm. Companies need things from government; governments often want access to data. When there are only a few firms, this can increase the likelihood of companies secretly cooperating with the government to provide access to data. China, for example, relies on its data-opolies to better monitor its population.
 - Covert surveillance. Even if the government cannot capture a data-opoly, its rich data-trove increases a government's incentive to circumvent the data-opoly's privacy protections to tap into the personal data. Even if the government can't strike a deal to access the data directly, it may be able to do so covertly.
 - Implications of a data policy violation/security breach. Data-opolies have greater incentives to prevent a breach than do typical firms. But with more personal data concentrated in fewer companies, hackers, marketers, political consultants, among others, have even greater incentives to find ways to circumvent or breach the dominant firm's security measures. The concentration of data means that if one of them is breached, the harm done could be orders of magnitude greater than with a normal company. While consumers may be outraged, a dominant firm has less reason to worry of consumers' switching to rivals.
- Significant costs on third parties. Additionally, data-opolies that control a key platform, like a mobile phone operating system, can cheaply exclude rivals by:
 - steering users and advertisers to their own products and services to the detriment of rival sellers on the platform (and contrary to consumers' wishes)
 - degrading an independent app's functionality
 - reducing traffic to an independent app by making it harder to find on its search engine or app store
- Less innovation in markets dominated by data-opolies. Data-opolies can chill innovation with a weapon that earlier monopolies lacked. Allen Grunes and I call it the "now-casting radar." Our book Big Data and Competition Policy explores how some platforms have a relative advantage in accessing and analyzing data to discern consumer trends well before others. Data-opolies can use their relative advantage to see what products or services are becoming more popular. With their now-casting radar, data-opolies can acquire or squelch these nascent competitive threats.
- Social and moral concerns. Historically, antitrust has also been concerned with how monopolies can hinder individual autonomy. Data-opolies can also hurt individual autonomy. To start with, they can direct (and limit) opportunities for startups that subsist on their super-platform. This includes third-party sellers that rely on Amazon's platform to reach consumers, newspapers and journalists

that depend on Facebook and Google to reach younger readers, and, as the European Commission's Google Shopping Case explores, companies that depend on traffic from Google's search engine.

- **Political concerns. Economic power often translates into political power. Unlike earlier monopolies, data-opolies, given how they interact with individuals, possess a more powerful tool: namely, the ability to affect the public debate and our perception of right and wrong.**
 - Many people now receive their news from social media platforms. But the news isn't just passively transmitted. Data-opolies can affect how we feel and think. Facebook, for example, in an "emotional contagion" study, manipulated 689,003 users' emotions by altering their news feed. Other risks of this sort include:
 - Bias. In filtering the information we receive based on our preferences, data-opolies can reduce the viewpoints we receive, thereby leading to "echo chambers" and "filter bubbles."
 - Censorship. Data-opolies, through their platform, can control or block content that users receive, and enforce governmental censorship of political or religious information.
 - Manipulation. Data-opolies can promote stories that further their particular business or political interests, instead of their relevance or quality.

Hudson '22

Hudson, David. "Arguments for freedom: The many reasons why free speech is essential." FIRE, 1 Nov. 2022,

<https://www.thefire.org/news/arguments-freedom-many-reasons-why-free-speech-essential>. Accessed 13 Jan. 2024.

- **Freedom of speech is closely connected to freedom of thought, an essential tool for democratic self-governance.**
- **In other words, freedom of speech is important for the proper functioning of a constitutional democracy.** Meiklejohn advocated these ideas in his seminal 1948 work, "Free Speech and Its Relation to Self-Government." Closely related to this is the idea that freedom of speech serves as a check against abuse by government officials. Professor Vincent Blasi referred to this as "the checking value" of free speech.

Paraphrased SuperNEG

We negate the resolution, Resolved: The United States federal government should repeal Section 230 of the Communications Decency Act.

Overview:

There are two main things to be aware of for this debate: Section 230, and the USMCA. First, [Section 230](#) of the Communications Decency Act provides internet sites civil liability protection on third-party content uploaded to the sites and for removing content. Second, The US-Mexico-Canada Agreement, or [USMCA](#), [replaced](#) the North American Free Trade Agreement (NAFTA) in 2020.

It is important to clarify what affirming does, or rather, does not do in the real world. Most importantly, repealing Section 230 would change *virtually nothing* regarding liability protections, as [Article 19.17](#) of the USMCA requires U.S. courts to maintain these 230-like protections. However, there will be devastating consequences in the short-term following a repeal, with no real reform being achieved as protections are still in place.

Sole Contention: Chaos

First, even if Article 19.17 of the USMCA requires U.S. courts to apply nearly equal protections to Internet platforms, this does not mean there won't be increased litigation.

[Bambauer '21](#) explains that there will still be a wave of litigation with a 230 repeal. Sites like YouTube and Twitter have been sued in the past, and 230 has ultimately protected them. But, with 230 gone, users will re-litigate existing theories and try out new ones to compel platforms to remove or replace content, leading to an expensive and protracted process that ultimately ends in the same result.

This sudden increase in litigation will lead to a series of negative consequences. First, platforms with user-generated content (UGC) will incur more legal fees as a result of lawsuits, which will disproportionately push smaller platforms away. [Kelley '20](#) explains that competition amongst internet platforms would likely fail as only the largest companies could survive the cost of illegitimate lawsuits that they would have to fight. The costs of litigation itself would be enough to shut down smaller platforms, even if they ultimately aren't liable under Article 19.17. Companies would also become more risk-averse and moderate content more to avoid these suits, and Kelley further argues that the largest companies would also be the only ones able to do so somewhat effectively, which leads into the second consequence of over-moderation. [Nabil '21](#) corroborates this, as smaller firms may just remove more UGC or cease to host it altogether to avoid court costs. This deterrence will only further entrench Big Tech's market dominance and protect them from future competition. Ultimately, through over-moderation and small/medium-sized UGC platforms shutting down completely, free speech online is eroded. **Thus, there are three impacts; a U.S. recession, harmful big tech over-dominance, and free speech decreasing.**

Tech startups are a huge economic contributor in the United States, and any loss of platforms would be detrimental. [ITIF '17](#) tells us that Tech startups account for 2.8 percent of all U.S. companies, 33 percent of all tech firms, and they have many benefits in comparison to non-tech startups. Technology-based start-ups pay more than twice the national average wage, and almost three times the average overall start-up wage. [Statista '23](#) explains that the tech sector is responsible for nearly \$2 trillion of the U.S. GDP, or 9.3 percent. Losing roughly a third of that GDP, or over 3 percent would cause a recession, as the [IMF](#) quantifies, saying that a recession is usually associated with a loss of 2 percent GDP or more.

Additionally, [Stucke '18](#) explains how harmful Big Tech monopolies are in a few key ways. Stucke tells us that tech platforms will decrease in quality, and reduce privacy protections that help protect consumers below competitive levels. Data-opolies can also fail to disclose what data they collect and how they will use the data. There are surveillance and security risks, third-parties face significant increases in costs, less innovation, and other social, moral, and political concerns.

Finally, free speech is directly correlated with maintaining a free and fair democracy. [Hudson '22](#) states that freedom of speech is closely connected to freedom of thought, an essential tool for democratic self-governance. In other words, freedom of speech is important for the proper functioning of a constitutional democracy.

All in all, a repeal of Section 230 would accomplish nothing in terms of fundamental reform, as the protections on moderation/liability that it provides would still be guaranteed by Article 19.17. So we would be taking this step for no good reason, only to create a recession, boost Big Tech's data-opoly grip on the internet, and take away a vital medium of free speech globally.

Thus we negate.

Blocks to Affirmative (AT AFF)

[AT: Repealing Section 230 would help combat terrorism.](#)

[AT: Repealing Section 230 would remove legal barriers to redress against privacy violations.](#)

[AT: Repealing Section 230 reduces misinformation.](#)

[AT: Repealing Section 230 would lead to more ethical algorithms.](#)

[AT: Repealing Section 230 would incentivize platform changes promoting ethical user behavior.](#)

[AT: Repealing Section 230 would hold social media companies accountable for posts](#)

[AT: Repealing Section 230 protects users](#)

[AT: Repealing Section 230 strengthens democracy](#)

[AT: Repealing Section 230 promotes the free exchange of ideas](#)

[AT: Section 230 protects sex traffickers](#)

[AT: Repealing Section 230 protects children online.](#)

[AT: Repealing Section 230 reduces hate speech](#)

[AT: Repealing Section 230 limits Big Tech's power.](#)

[AT: Repealing Section 230 prevents censorship](#)

[AT: Repealing Section 230 encourages transparency.](#)

AT: Repealing Section 230 would help combat terrorism.

The threat of liability for terrorism would incentivize over-enforcement.

- 1. Platforms will suppress free speech related to non-terrorist political causes.** [Fishman 23'](#) Such incentives are likely to produce over-enforcement on legitimate internet users that highlight political or cultural issues also pursued by legally proscribed entities. Those same incentives may result in companies diverting resources away from hate groups that are not legally banned. Regulation might disincentivize companies from investigating threats on their own platforms and providing that information to law enforcement. Companies regularly identify real-world dangers before third parties; if exposed to liability for identifying such threats and referring them to law enforcement, platforms may be disincentivized from doing so.
- 2. Section 230 does not prohibit litigation against the people responsible for terrorist attacks, it only applies to social media companies.** [Johnson 21'](#) Nothing in the law prevents victims of crime and terrorism from taking civil action against their attackers. It only prevents them from taking civil action against the websites and online platforms their attackers used to commit acts of crime or terrorism. If an online service plays any part in the development of illegal content or induces illegal behavior, it cannot claim Section 230 protection.
- 3. Repealing Section 230 drastically overbalances the interest in addressing negative impacts against non-harmful content suppression.** [Forte 23'](#) Regulating online speech requires balancing two competing concerns: addressing negative impacts caused by platform abuse while avoiding actions that would prompt platforms to drop non-harmful content. The central question is whether it is worthwhile to change the operating procedure for the entire web to spare a few victims from inordinate harm. The answer is no. Our focus should be on addressing the most extreme and egregious cases of negligence rather than trying to clamp down more broadly.
- 4. Impact: Over-enforcement of terrorism would chill free speech.** [Granick 23'](#) Twitter and YouTube did not, and do not, have any intention of promoting terrorism. The companies would have removed them if they were flagged. There is also no allegation that the people behind the terrorist attack were inspired by these videos.

Imposing liability merely for hosting content without malicious intent or specific knowledge that any specific post furthered a particular criminal act would squelch online speech and association. It already happens, such as when Instagram confused a post about a landmark mosque with one about a terrorist group. These relatively common errors would become the new norm.

- 5. Impact: Overly chilling speech would push fringe opinions out of mainstream platforms and into more extremist into private and unregulated spaces. Boden 23'** If algorithmic recommendations were held to be outside Section 230's protections, the false positive problem would immediately become very real, with the potential for enormous harm to lawful speakers and listeners. If YouTube could not rely on Section 230 to shield it from suits over its recommendation of allegedly illegal, tortious, or harmful videos, it would have to either engage in continual litigation or ensure that such videos were not recommended by its algorithms. YouTube would have two options. First, it could train its algorithm to exclude anything resembling the unwanted content, eliminating false negatives by embracing false positives. Alternatively, it could recommend only content pre-screened by human YouTube employees. In either case, much lawful, valuable expression would be excluded from YouTube's speech discovery algorithms along with the bad. Crucially, controversial but lawful speech about religion, politics, and health would likely face the most exclusion. To eliminate extremist religious speech, platforms would exclude esoteric or merely misunderstood theological discussion. To eliminate bad health advice, useful debates over experimental treatments would have to go, and so on. The result would be a winnowing of our many modern public squares, which would only push extremism further into private spaces, with fewer opportunities for observation or counterspeech.

Analysis: Analytically, find the number of victims in the United States from terrorist attacks, which is very small, and use that in weighing to show the insignificance of this argument from Pro. Use the arguments from free speech protecting fringe views, but be aware that Pro may just accept the pushing out and siloing of fringe views as an impact; it will then become critical to argue that counterspeech and observation in public fora is necessary.

Warrant: Platforms will suppress free speech related to non-terrorist political causes.

Source: Fishman, Brian. "Dual-Use Regulation: Managing Hate and Terrorism Online Before and After Section 230 Reform." Brookings Institute, 14 Mar. 2023.

<https://www.brookings.edu/articles/dual-use-regulation-managing-hate-and-terrorism-online-before-and-after-section-230-reform/>

Regulation incentivizing companies to focus on removing the subset of proscribed content that is illegal will de facto disincentivize them from pursuing a broader set of harms. Such incentives are likely to produce over-enforcement on legitimate internet users that highlight political or cultural issues also pursued by legally proscribed entities, such as Palestinian nationalism, Kashmiri independence, or fans of narcocorridos. Those same incentives may result in companies shifting resources away from hate groups that are not legally banned, like the violent extremist group The Base or the Ku Klux Klan. In a worst-case scenario, regulation might disincentivize companies from investigating threats on their own platforms and providing that information to law enforcement. Although it rarely makes headlines, companies regularly identify real-world dangers before third parties; if exposed to liability for identifying such threats and referring them to law enforcement, platforms may be disincentivized from doing so.

Warrant: Section 230 does not prohibit litigation against the people responsible for terrorist attacks, only the social media companies.

Johnson, Ashley & Daniel Castro. "Fact-Checking the Critiques of Section 230: What are the Real Problems?" Information Technology & Innovation Foundation, 22 Feb. 2021.

<https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>

Section 230's supporters call this line of reasoning into question. Nothing in the law prevents victims of crime and terrorism from taking civil action against their attackers. It only prevents them from taking civil action against the websites and online platforms their attackers used to commit acts of crime or terrorism. If an online service plays any part in the development of illegal content or induces illegal behavior, it cannot claim Section 230 protection. The online services the section does protect are the websites and platforms that act as passive intermediaries: social media platforms on which criminals and terrorists recruit, online messaging services on which criminals and terrorists communicate, and websites on which criminals and terrorists post illegal content. In other words, Section 230 "holds individuals responsible for their actions online, not the tools that they use." In practice, this means that if an online service engages in illegal activity—such as knowingly aiding and abetting terrorists—federal law enforcement can take action against the service. But online services are not legally responsible for criminals misusing their platforms. Some countries' intermediary liability laws include a provision that holds online services responsible if they were aware or reasonably should have been aware of criminal conduct on their platforms, but once again, the danger of such a provision is that it could make it more difficult for online services to dismiss frivolous lawsuits, dramatically raising the costs of operating an online service that relies on third-party content or motivate online services to engage in less monitoring to reduce their potential liability.

Warrant: Repealing Section 230 drastically overbalances interest in addressing negative impacts against non-harmful content suppression.

Forté, Jamie. "Limited Liability is a Better Solution Than Section 230 Repeal." NH Business Review, 6 Apr. 2023. <https://www.nhbr.com/limited-liability-is-a-better-solution-than-section-230-repeal/>

Regulating online speech requires balancing two competing concerns: addressing negative impacts caused by platform abuse while avoiding actions that would prompt platforms to drop non-harmful content. The central question is whether it is worthwhile to change the operating procedure for the entire web to spare a few victims from inordinate harm. I believe the answer is no. We should not, however, give up

on addressing the negative consequences of unfettered content. One reasonable solution is a form of limited legal liability, which stipulates that harm must a) stem directly from the platform's negligence, including failure to address known issues, and b) be sufficiently severe to warrant action (e.g., threat to security, loss of life or livelihood, etc.). Most major content platforms have a process for considering content removal appeals, but are slow to respond to inquiries or prone to ignore them altogether. A standard based on harm would incentivize companies to address abuse in days or weeks, instead of months or years. The key would be assigning a level of financial liability that would make responsiveness worthwhile, but not so high that platforms would shy away from hosting user content altogether, which still drives most revenue. With respect to *Gonzalez v. Google*, the standard would require demonstrating not only that the attacks followed directly from their perpetrators' viewing of the ISIS videos but also that Google was asked to take the videos down and refused or otherwise failed to do so until after the attacks. Without this additional degree of scrutiny, every platform could be held liable for any perceived harm stemming from user content. Our focus should be on addressing the most extreme and egregious cases of negligence rather than trying to clamp down more broadly.

Impact: Over-enforcement of terrorism would chill free speech.

Granick, Jennifer. "Is This the End of the Internet As We Know It?" ACLU, 22 Feb. 2023. <https://www.aclu.org/news/free-speech/section-230-is-this-the-end-of-the-internet-as-we-know-it>
This term, the Supreme Court will consider the scope of the law's protections in *Twitter v. Taamneh* and *Gonzalez v. Google*. These cases were brought by family members of U.S. citizens who were killed by ISIS in terrorist attacks. The suits allege that platforms, including Twitter and Google's YouTube, are "aiding and abetting" ISIS attacks by failing to adequately block or remove content promoting terrorism. But Twitter and YouTube did not, and do not, have any intention of promoting terrorism. The videos plaintiffs identified were posted by ISIS operatives and, while lawful, violate Twitter's and YouTube's terms of service. The companies would have removed them if they were flagged. There is also no allegation that the people behind the terrorist attack were inspired by these videos. The ACLU's amicus brief in *Twitter v. Taamneh* asserts that imposing liability under these circumstances would improperly chill speech. Of course, a platform could promote terrorism through its policies and actions. But imposing liability merely for hosting content without malicious intent or specific knowledge that any specific post furthered a particular criminal act would squelch online speech and association. It already happens, such as when Instagram confused a post about a landmark mosque with one about a terrorist group. These relatively common errors would become the new norm.

Impact: Overly chilling speech would push fringe opinions out of mainstream platforms and into more extremist, private, and unregulated spaces.

<https://www.cato.org/sites/cato.org/files/2023-01/gonzalez-v-google.pdf>

If algorithmic recommendations were held to be outside Section 230's protections, the false positive problem would immediately become very real, with the potential for enormous harm to lawful speakers and listeners. If YouTube could not rely on Section 230 to shield it from suits over its recommendation of allegedly illegal, tortuous, or harmful videos, it would have to either engage in continual litigation or ensure that such videos were not recommended by its algorithms. Even if YouTube could bear the cost of defending these suits, smaller competitors like Rumble would not be able to. In order to ensure that potentially actionable videos were not recommended by its algorithm, YouTube would have two options. First, it could train its algorithm to exclude anything resembling the unwanted content, eliminating false negatives by embracing false positives. Alternatively, it could recommend only content pre-screened by human YouTube employees. In either case, much lawful, valuable expression would be excluded from YouTube's speech discovery algorithms along with the bad. Crucially, controversial but lawful speech about religion, politics, and health would likely face the most exclusion. To eliminate extremist religious speech, platforms would exclude esoteric or merely misunderstood theological discussion. To eliminate bad health advice, useful debates over experimental treatments would have to go, and so on. The result would be a winnowing of our many modern public squares, which would only push extremism further into private spaces, with fewer opportunities for observation or counterepeech.

AT: Repealing Section 230 would remove legal barriers to redress against privacy violations.

Section 230 does not stand in the way of people seeking redress for privacy violations, and other privacy violations are more greatly harmed through repeal of Section 230.

- 1. Lawsuits against revenge porn and other forms of abuse are commonplace despite Section 230.** [Johnson 21'](#) There are some bad actors that design their platforms to amplify and profit from harmful or illegal content—such as revenge porn websites, websites such as Backpage that protected sex traffickers, or websites such as Dirty World that solicit defamatory statements from commenters—for whom market incentives have little effect. Bad actors can and do still end up facing civil and criminal penalties for violating other laws, as was the case when the Federal Trade Commission (FTC) shut down the revenge porn site MyEx and fined its operators \$2 million in 2018. Law enforcement can also take action against websites, as Section 230 does not shield online services from federal criminal liability. In the case of Backpage, Section 230 did not prevent the Department of Justice from seizing the website in 2018, before Congress passed the Allow States and Victims to Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA). The law

carved out an exception for sex trafficking in Section 230 so that online services could be liable in civil as well as criminal court for violating state sex trafficking laws.

2. **Repealing Section 230 would not decrease privacy violations because it would still be exceptionally difficult to censor search engine results.** [Francis 21'](#) Limiting the exception to search engines does nothing to reduce harassment on social media platforms, where the harm can be greater because the intended audience is one's peers. The practical implications of a full Section 230 repeal are difficult to predict. Whether a world without Section 230 is one in which truth prevails and tech behemoths stamp out harassment is unclear. What is clear is that we should be cautious in continuously adding exceptions to Section 230.
3. **Repealing Section 230 is unnecessarily aggressive when other more targeted legislation can more effectively address this problem without destabilizing coordination with European partners.** [Kerry 21'](#) There are no panaceas for the problems arising from online content and social networks. It will take a range of very specific measures aimed at different aspects of platforms to accomplish what many people seem to broadly expect from Section 230 revision. These include competition enforcement under the Sherman and Clayton Acts, and new comprehensive privacy legislation that sets normative boundaries on the collection, use, and sharing of personal information. We need to conduct this work with an eye on international impact and on cooperation with international partners. As the European Union embarks on its Digital Services Act and other digital platforms legislation, we need to cooperate to find common ground that would both address problems that we both perceive, as well as protect common values in freedom of expression. Above all, we must find a solution to preserve the extraordinary human value and connectivity that information provides to the world while simultaneously curbing its excesses.
4. **Impact:** Repeal would make current bills ineffective at leveraging Section 230 immunity in order to create government backdoors that allow for effective regulation of privacy concerns. [Savage 20'](#) Encryption, pornography, and Section 230 have come together with the leaking of a draft bill known as the "EARN IT" Act. Is purportedly directed to concerns about the distribution of child pornography and would set up a commission to develop industry "best practices" for how to prevent online child exploitation. It would eliminate a service or platform's Section 230 immunity from civil suits brought by victims of exploitation unless the provider has certified that it has implemented the best practices laid out by the newly-formed commission. Second, notwithstanding whatever compromises the commission may work out in developing consensus "best practices," the Attorney General would be empowered to modify the "best practices" as he sees fit, meaning that the extent of Section 230 immunity could change based on the Attorney General's discretion. The Attorney General could require backdoors into platforms' encrypted communications systems, with Section 230 immunity held as a hostage to ensure the platforms comply.

Analysis: The strength of these responses is relatively hypothetical, so the focus should be on undermining the solvency capacity of the Pro case. Critique their evidence and use the Johnson & Castro '21 card to show that they are misattributing the problem.

Warrant: Litigation against revenge porn and other forms of abuse are commonplace despite Section 230.

Source: Johnson, Ashley & Daniel Castro. "Fact-Checking the Critiques of Section 230: What Are the Real Problems?" Information Technology & Innovation Foundation, 22 Feb. 2021.
<https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>

Outside these mainstream platforms, there are some bad actors that design their platforms to amplify and profit from harmful or illegal content—such as revenge porn websites, websites such as backpage that protected sex traffickers, or websites such as Dirty World that solicit defamatory statements from commenters—for whom market incentives have little effect. Bad actors can and do still end up facing civil and criminal penalties for violating other laws, as was the case when the Federal Trade Commission (FTC) shut down the revenge porn site MyEx and fined its operators \$2 million in 2018. Law enforcement can also take action against websites, as Section 230 does not shield online services from federal criminal liability. In the case of backpage, Section 230 did not prevent the Department of Justice from seizing the website in 2018, before Congress passed the Allow States and Victims to Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA). A response to backpage, the law carved out an exception for sex trafficking in Section 230 so that online services could be liable in civil as well as criminal court for violating state sex trafficking laws (the companies could already be held criminally liable for federal sex trafficking laws).

Warrant: Repealing Section 230 would not decrease privacy violations because it would still be exceptionally difficult to censor search engine results.

Source: Francis, Jordan. "Preserving the E-Market of Ideas: How a Narrow 'Right to Be Forgotten' Exception to Section 230 Can Combat Digital Harassment Without Decimating Digital Discourse." Minnesota Law Review, 25 Mar. 2021.

<https://minnesotalawreview.org/2021/03/25/preserving-the-e-market-of-ideas-how-a-narrow-right-to-be-forgotten-exception-to-section-230-can-combat-digital-harassment-without-decimating-digital-discourse/>

Opponents of Section 230 who are motivated by combating misinformation and online harassment might oppose these limitations. Limiting the exception to search engines does nothing to reduce harassment on social media platforms, where the harm can be greater because the intended audience is one's peers. Likewise, limiting an exception to defamatory content or invasions of privacy does nothing to address problems of misinformation on issues like QAnon, COVID-19, or the U.S. election. Those are serious concerns, but they exceed the scope of this article. As explained above, the practical implications of a full Section 230 repeal are difficult to predict. Whether a world without Section 230 is one in which truth prevails and tech behemoths stamp out harassment is unclear. What is clear is that we should be cautious in continuously adding exceptions to Section 230.

Warrant: Repealing Section 230 is unnecessarily aggressive when other more targeted legislation can more effectively address this problem without destabilizing coordination with European partners.

Source: Kerry, Cameron. "Section 230 Reform Deserves Careful and Focused Consideration." Brookings Institute, 14 May 2021.

<https://www.brookings.edu/articles/section-230-reform-deserves-careful-and-focused-consideration/>

In the end, there are no panaceas for the problems arising from online content and social networks. And while there may be changes to Section 230 that could adjust incentives to moderate content and block offensive content, I believe it will take a range of very specific measures aimed at different aspects of platforms to accomplish what many people seem to broadly expect from Section 230 revision. These include competition enforcement under the Sherman and Clayton Acts and new comprehensive privacy legislation that sets normative boundaries on the collection, use, and sharing of personal information. In whatever solutions we adopt, America should not act alone. We need to conduct this work with an eye on international impact and on cooperation with international partners. As the European Union embarks on its Digital Services Act and other digital platforms legislation, we need to cooperate to find common ground that would both address problems that we both perceive, as well as protect common values in freedom of expression. Above all, we must find a solution to preserve the extraordinary human value and connectivity that information provides to the world while simultaneously curbing its excesses.

Impact: Repeal would make current bills ineffective at leveraging Section 230 immunity to create government backdoors that allow for effective regulation of privacy concerns.

Source: Savage, Christopher. "Privacy Issues in the Ongoing Controversy Over Section 230." Davis Wright Tremaine LLP, 3 Mar. 2020.

<https://www.dwt.com/blogs/privacy-security-law-blog/2020/03/communications-act-section-230>

Encryption, pornography, and Section 230 have come together with the leaking of a draft bill known as the "EARN IT" Act. The bill (evidently drafted by Senator Lindsey Graham) is purportedly directed to concerns about the distribution of child pornography and would set up a commission to develop industry "best practices" for how to prevent online child exploitation. The bill would take two additional steps, however, that raise significant concerns for platforms and content providers. First, it would eliminate a service or platform's Section 230 immunity from civil suits brought by victims of exploitation unless the provider has certified that it has implemented the best practices laid out by the newly-formed commission. Second, notwithstanding whatever compromises the commission may work out in developing consensus "best practices," the Attorney General would be empowered to modify the "best practices" as he sees fit, meaning that the extent of Section 230 immunity could change based on the Attorney General's discretion. Apps and online services offering strongly encrypted end-to-end communication are increasingly available, and, of course, law enforcement invokes child pornographers (as well as terrorists, drug dealers, and other malefactors) as being unfairly advantaged by being able to use strong encryption to frustrate law enforcement. Commentators quickly noted the potential concern for platforms and services that offer strongly encrypted communications tools—in the name of protecting against online child exploitation, the Attorney General could require backdoors into platforms' encrypted communications systems, with Section 230 immunity held as a hostage to ensure the platforms comply. And, lest the connection between Section 230 and strong encryption be seen as too obscure, on the very day of the Department of Justice workshop, former NSA General Counsel Stewart Baker, a well-known commentator on these issues, published an article in the prominent Lawfare blog, expressly tying encryption issues to Section 230 reform.

AT: Repealing Section 230 reduces misinformation.

Litigating platforms for misinformation and disinformation will not be effective, and fighting misinformation by repealing Section 230 only eliminates minority views while destroying small platforms incapable of policing misinformation.

[De Witte '22](#) reports,

- 1. The real defender of misinformation and disinformation is the first amendment.** → “In a world without Section 230, platforms that now face potential liability for content on their sites will be far more risk-averse and take a lot more content down to avoid the possibility of facing a lawsuit. It’s also important to understand that much of the speech that people are worried about – hate speech, or political and medical misinformation, for example – is protected speech under the First Amendment. That’s why platforms don’t face liability, not because of Section 230. Get rid of section 230 tomorrow, and you still won’t be able to sue YouTube in the U.S. for hosting hate speech.”

[Hwang '20](#) reports,

- 2. Litigation against platforms for the dissemination of disinformation would not be successful.** → “It should be observed that CDA 230 only operates to preclude the bringing of a suit against the platform seeking to find it liable as if it were the publisher of the defamatory content. Even if it did not, the fact that many acts of political disinformation will target public figures may mean that claims like defamation and libel may, as yet, be relatively weak legal tools to bring to bear. Even without CDA 230, a successful suit by a public figure would need to meet the standard set under *New York Times Co. v. Sullivan*, which requires proof of 'actual malice.' This is a challenging burden that requires plaintiffs to show that the act was committed with 'sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication.’”

[Terr '23](#) reports,

- 3. Repealing Section 230 would eliminate free speech online.** → “Without Section 230, websites would likely change their business model and stop hosting user-generated content altogether, creating a scarcity of platforms that sustain our ability to communicate with each other online. Surviving platforms would moderate content more aggressively and maybe even screen all content before it's posted. That isn't a recipe for a thriving, free-speech-friendly internet. None of these platforms have the capacity to carefully review all content, let alone make consistently accurate judgments about its legality. Section 230 doesn't just protect platforms from liability for unlawful content created by others; it also facilitates the prompt dismissal of frivolous lawsuits, even in cases that don't even involve unlawful speech. Without Section 230, many of these lawsuits would still cause platforms major headaches by requiring them to engage in extensive discovery and pretrial motions. What's more, pre-approving posts would destroy an essential feature of so many websites: their users' ability to interact with each other in real-time, to comment on current events while they're still current.”

[Kerry '21](#) reports,

4. **Impact:** Smaller platforms would go out of business, and surviving platforms would lose what abilities they currently have to moderate the content they want to moderate. → “Requiring content moderation would pose untenable obligations for many smaller providers that do not have the capacity that large corporations like Facebook do, to both automate some of the screening content as well as to engage (in Facebook’s case) many thousands of human content moderators to review posts and make content decisions. Much of what is online, that we consider offensive speech or misinformation, in one way or another, requires contextual judgments by humans to identify the problems and decide what’s over the line. The proposed application of common carrier obligations to websites or social media platforms, comparable to those under Title II of the 1996 Telecommunications Act, would essentially neuter the ability of platforms and service providers to moderate content. The result would only exacerbate some of the problems with offensive content.”

[Earp '21](#) reports,

5. **Impact:** Even if repealing Section 230 solved the misinformation problem, it would negatively impact citizen journalism. → “Journalists and legal experts speculated that without Section 230, companies would need resources to manage liability and strategies to reduce it—a change that would favor established players. Giants like Google, Facebook, and Twitter might lean more on known news brands to identify quality information, they said, but smaller operations might shut down interactions altogether. In other words, Section 230 reform could reduce misinformation or abuse—but it could also restrict citizen journalism.”

Analysis: Pro cases will try to run this argument very often, but it is not as strong as it looks on face value. Impacting out further on the problems of greater monopolization as larger platforms stop having to compete with smaller competitors is a promising angle, impacting the loss of free speech further, and finding other problems in the link between repeal and reductions in misinformation are all strong lines of countering this argument with high potential to turn the impacts mentioned by Pro.

The main goal of Section 230 is not to protect platforms but to protect speech. In a world without Section 230, platforms that now face potential liability for content on their sites will be far more risk-averse and take down a lot more content to avoid the possibility of facing a lawsuit. The #MeToo movement, for example, might have played out very differently in a world where platforms took down any posts that even remotely looked defamatory. It's also important to understand that much of the speech that people are worried about – hate speech, or political and medical misinformation, for example – is protected speech under the First Amendment. That's why platforms don't face liability, not because of Section 230. Get rid of Section 230 tomorrow, and you still won't be able to sue YouTube in the U.S. for hosting hate speech.

Litigation against platforms for the dissemination of disinformation would not be successful.

Hwang, Tim. "Dealing with Disinformation: Evaluating the Case for Amendment of Section 230 of the Communications Decency Act." *Social Media and Democracy*, 24 Aug. 2020.

<https://www.cambridge.org/core/books/social-media-and-democracy/dealing-with-disinformation-evaluating-the-case-for-amendment-of-section-230-of-the-communications-decency-act/665B952A70A6A5F277E2171A87CA75D8>

It should be observed that CDA 230 only operates to preclude the bringing of a suit against the platform seeking to find it liable as if it were the publisher of the defamatory content. Even if it did not, the fact that many acts of political disinformation will target public figures of various kinds may mean that claims like defamation and libel may as yet be relatively weak legal tools to bring to bear. For instance, even without CDA 230, a successful suit by a public figure would need to meet the standard set under *New York Times Co. v. Sullivan*, which requires proof of 'actual malice.' This is a challenging burden that requires plaintiffs to show that the act was committed with 'sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication.' [Footnote 24.] Even in light of the limitations imposed by CDA 230, it is important to underscore that the law does not effectively bar all legal or regulatory interventions that would incentivize platforms to combat online political disinformation. Two routes provide a potential basis for changing the state of play around this issue.

Repealing Section 230 would eliminate free speech online.

Terr, Aaron. "Why Repealing or Weakening Section 230 is a Very Bad Idea." *Foundation for Individual Rights and Expression*, 20 Feb. 2023.

<https://www.thefire.org/news/whv-repealing-or-weakening-section-230-very-bad-idea>

Without Section 230, websites would be left with a menu of unattractive options to avoid lawsuits over their users' speech. Many would likely change their business model and stop hosting user-generated content altogether, creating a scarcity of platforms that sustain our ability to communicate with each other online. This changed landscape would entrench the dominance of large platforms that can afford to defend endless lawsuits and devote extensive resources to moderating vast amounts of user content. Surviving platforms would moderate content more aggressively and maybe even screen all content before it's posted. That isn't a recipe for a thriving, free-speech-friendly internet. If you think Twitter and Facebook go too far with content moderation now, just imagine how much more aggressively these platforms would moderate if threatened with liability for users' speech. None of these platforms have the capacity to carefully review all content, let alone make consistently accurate judgments about its legality. They would likely tweak their algorithms, which already produce lots of false positives, to take down even more content. Section 230 doesn't just protect platforms from liability for unlawful content created by others: It also facilitates the prompt dismissal of frivolous lawsuits, even in cases that don't even involve unlawful speech. Without Section 230, many of these lawsuits would still cause platforms major headaches by requiring them to engage in extensive discovery and pretrial motions. What's more, pre-approving posts would destroy an essential feature of so many websites: their users' ability to interact with each other in real-time, to comment on current events while they're still current. It would also limit platforms' growth, constraining the amount of new content based on a platform's capacity to review it.

Impact: Smaller platforms would go out of business, and surviving platforms would lose what abilities they currently have to moderate the content they want to moderate.

Kery, Cameron F. "Section 230 reform deserves careful and focused consideration" *Brookings Institution*, 14 May. 2021.

<https://www.brookings.edu/articles/section-230-reform-deserves-careful-and-focused-consideration/>

Requiring content moderation would pose untenable obligations for many smaller providers that do not have the capacity that large corporations like Facebook do to both automate some of the screening content as well as to engage (in Facebook's case) many thousands of human content moderators to review posts and make content decisions. That experience demonstrates that much of what is online that we consider offensive speech or misinformation, in one way or another, requires contextual judgments by humans to identify the problems and decide what's over the line. There are many good suggestions out there to curb flows of offensive content that could make for best practices or codes of conduct, but these could also raise serious constitutional challenges if imposed by the government. Similarly, the proposed application of common carrier obligations to websites or social media platforms, comparable to those under Title II of the 1996 Telecommunications Act, would essentially neuter the ability of platforms and service providers to moderate content. The result would only exacerbate some of the problems with offensive content. Disabling social media platforms from limiting user content would entrench on values of freedom of expression, where most Americans would rather not have the government make such judgments.

AT: Repealing Section 230 would lead to more ethical algorithms.

Repealing Section 230 would displace algorithms for the most part to the detriment of platforms, consumers, and markets.

- 1. Distinguishing between recommendation algorithms and algorithmic amplification, so benign yet necessary recommendation algorithms will be affected by the repeal.** [Ryan-Mosley 23'](#) "[I]f Section 230 is repealed or broadly reinterpreted, these companies may be forced to transform their approach to moderating content and to overhaul their platform architectures in the process." "While it might seem plausible to draw a distinction between recommendation algorithms (especially those that aid terrorists) and the display and hosting of content, technically speaking, it's a really murky distinction. Algorithms that sort by chronology, geography, or other criteria manage the display of most content in some way, and tech companies and some experts say it's not easy to draw a line between this and algorithmic amplification, which deliberately boosts certain content and can have harmful consequences (and some beneficial ones too)."
- 2. Section 230's repeal would remove algorithms that promote user satisfaction.** [Moss 23'](#) Recommendation algorithms help users by customizing and optimizing their online experience. Social media websites use their algorithms to create personalized search results by looking at users' browsing history. Consumers trying to make informed online purchases may benefit from targeted advertisements for products or services for which they have searched.

3. **Impact:** Platforms would be functionally unable to meet the demand for content publication without algorithms that do not require human moderation. [Grimmelmann 23'](#) An Internet without targeted recommendations would be unusable. Every Google search result is a targeted recommendation. If Google were liable for every illegal piece of content that shows up in its search results, it could not exist. Elon Musk is trying to reconfigure Twitter's recommendation algorithm so that it does a better job of showing users interesting tweets. If the Supreme Court rules for the Gonzalez plaintiffs, Twitter would have to push everyone to a chronological timeline - or risk company-killing liability. But limiting Section 230 won't fix recommendation algorithms. Instead, it will damage the rest of the internet, making everything uniformly worse.
4. **Impact:** Generative AI advancements would halt, and innovation with it. [Thierer 23'](#) Blumenthal and Hawley have introduced this bill and proposed expanding liability for AI systems more generally as part of a comprehensive regulatory framework for AI. The United States wisely rejected this regulatory approach for the internet a generation ago because policymakers came to understand how such policies undermined innovation and investment. If an agency is created, regulatory burdens will proliferate and AI will wither. And the dissipation of agencies and regulations is unlikely, so it will stay regardless of utility. The combined result of these proposals would decimate algorithmic innovation and see America shooting itself in the foot as the global race for AI supremacy heats up.

Analysis: The last impact is a potential voter to pull out in case it feels like all the other points are too murky for the judge to effectively weigh in your favor. Social media companies do create a substantial amount of the demand for generative AI, and without that demand, advancement would not occur, which is critical to US geopolitical security.

Warrant: Distinguishing between recommendation algorithms and algorithmic amplification, so benign yet necessary recommendation algorithms will be affected by the repeal. Ryan-Mosley, Tate. "The Supreme Court May Overhaul How You Live Online." MIT Technology Review, 13 Feb. 2023.

<https://www.technologyreview.com/2023/02/13/1068311/supreme-court-section-230-gonzalez-google-content-recommendation-algorithm/>

The stakes could not really be higher. As I wrote: "[I]f Section 230 is repealed or broadly reinterpreted, these companies may be forced to transform their approach to moderating content and to overhaul their platform architectures in the process." Without getting into all the legalese here, what is important to understand is that while it might seem plausible to draw a distinction between recommendation algorithms (especially those that aid terrorists) and the display and hosting of content, technically speaking, it's a really murky distinction. Algorithms that sort by chronology, geography, or other criteria manage the display of most content in some way, and tech companies and some experts say it's not easy to draw a line between this and algorithmic amplification, which deliberately boosts certain content and can have harmful consequences (and some beneficial ones too). While my story last week narrowed in on the risks the ruling poses to community moderation systems online, including features like the Reddit upvote, experts I spoke with had a slew of concerns. Many of them shared the same worry that SCOTUS won't deliver a technically and socially nuanced ruling with clarity.

Warrant: Section 230's repeal would remove algorithms that promote user satisfaction.

Moss, Rosie. "The Future of Section 230 | What Does It Mean for Consumers?" National Association of Attorney General, 21 Jul. 2023.

<https://www.naag.org/attorney-general-journal/the-future-of-section-230-what-does-it-mean-for-consumers/>

Another argument made by supporters of keeping Section 230 intact is that recommendation algorithms help users by customizing and optimizing their online experience. For example, social media websites use their algorithms to create personalized search results by looking at users' browsing history. Consumers trying to make informed online purchases may benefit from targeted advertisements for products or services for which they have searched. Although some consumers may view this activity as suspicious or worry that companies are collecting and tracking their personal information, they may also benefit from customized advertisements and search results. But it could be possible to preserve these positive effects while reducing the harms that the recommendation algorithms create. In 2021, Congressman Frank Pallone and other members of the House Energy and Commerce Committee introduced legislation that would amend Section 230 by imposing liability when online platforms knowingly or recklessly make personalized recommendations that directly cause harm to a user.^[45] In effect, this would allow social media companies to retain immunity for the use of recommendation algorithms, except for when they knowingly or recklessly contribute to an injury.

Impact: Platforms would be functionally unable to meet the demand for content publication without algorithms that do not require human moderation.

<https://news.cornell.edu/media-relations/tip-sheets/limiting-section-230-wont-fix-recommendation-algorithms>

The Gonzalez plaintiffs are asking the Supreme Court to distinguish between carrying content and 'targeted recommendations.' But an Internet without targeted recommendations would be unusable. "Every Google search result is a targeted recommendation. If Google were liable for every illegal piece of content that shows up in its search results, it could not exist. Elon Musk is trying to reconfigure Twitter's recommendation algorithm so that it does a better job of showing users interesting tweets. If the Supreme Court rules for the Gonzalez plaintiffs, Twitter would have to push everyone to a chronological timeline - or risk company-killing liability. Critics of big social-media platforms like Google, Facebook, and Twitter have tried to argue that algorithmic recommendations are suspicious and dangerous—pointing to isolation, addiction, and echo chambers. But limiting Section 230 won't fix recommendation algorithms. Instead, it will damage the rest of the internet, making everything uniformly worse."

Impact: Generative AI advancements would halt and innovation with it.

Thierer, Adam & Shoshana Weissman. "Without Section 230 Protections, Generative AI Innovation Will be Decimated." R Street, 6 Dec. 2023.

<https://www.rstreet.org/commentary/without-section-230-protections-generative-ai-innovation-will-be-decimated/>

Importantly, Blumenthal and Hawley have introduced this bill and proposed expanding liability for AI systems more generally as part of a comprehensive regulatory framework for AI they floated this summer. In addition to expanded liability for AI developers through S. 1993, they also call for a new AI-specific regulatory agency, the licensing of high-powered AI systems and assorted transparency requirements. The United States wisely rejected this regulatory approach for the internet a generation ago because policymakers came to understand how such policies undermined innovation and investment. If an agency is created, regulatory burdens will proliferate and AI will wither. And the dissipation of agencies and regulations is unlikely, so it will stay regardless of utility. Unfortunately, the Blumenthal and Hawley bill will

AT: Repealing Section 230 would incentivize platform changes promoting ethical user behavior.

Repealing Section 230 would only hurt the people it seeks to help by promoting ethical behavior.

- 1. Pushing out users whose content might create legal liability for platforms hurts users who rely on the internet to ensure their security. [McCombs 18'](#)**
The Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), which says websites can be held legally liable if their users post ads for prostitution, was signed into law. Following its passage, the bill was responsible for the closure of a host of advertising and review sites used by sex workers, most prominently Craigslist Personals and Backpage, the latter of which was seized and shut down by the FBI. The bill was intended to fight sex trafficking, but it has had a dangerous effect on the many sex workers who have consensually chosen the profession and who relied on the internet and its tools to keep themselves safe and make a living. For many consensual sex workers, losing these free or low-cost advertising platforms means losing the ability to work indoors and the ability to screen clients – two major factors that contribute to a sex worker’s overall safety. Sex workers also rely on the safety tool of communal “bad date lists” – websites where sex workers share information on bad or dangerous clients. Sex workers say these too are being shut down in the wake of FOSTA’s passage. Opportunistic clients and pimps are taking advantage of the rapid changes, hoping to prey on the stressed community and on the workers they assume are desperate. “This bill will and already has been responsible for the murder, rape [and] arrest of sex workers and will further push trafficked people underground,” says Arabelle Raphael, a 29-year-old sex worker in California.
- 2. Anonymous activity on the internet creates liability concerns for platforms, but it is necessary for activists, journalists, and members of vulnerable**

communities. [Krahulcova 21'](#) David Kaye, former Special Rapporteur on Freedom of Expression, studied the use of encryption and anonymity in digital communications. The report concluded that encryption and anonymity act as key enablers for individuals to exercise their rights to freedom of opinion and expression in the digital age and, as such, deserve strong protection. "Strong encryption and anonymity are fundamental for the protection of human rights in the digital age and are critical to individuals who face persecution because of their sexual orientation or gender identity. Anonymity has been a crucial tool for women and sexual minorities for self-expression, connecting, and mobilizing, and the use of anonymity online supports the most vulnerable groups.

- 3. Impact:** Repealing Section 230 would limit criticism of the government and enable authoritarian politics while undermining collective cybersecurity. [Human Rights Watch 15'](#) Digital technologies have enabled intrusive surveillance on an unprecedented scope and scale. Such surveillance allows governments to identify journalistic sources, government critics, or members of persecuted minority groups and expose them to reprisals. Ordinary users also face a range of online dangers, from abusive surveillance to victimization by cybercriminals and other malicious actors. Strong encryption and anonymity defend Internet users from such threats and create a "zone of privacy to protect opinion and belief" and other rights. "In the contemporary technological environment, intentionally compromising encryption, even for arguably legitimate purposes, weakens everyone's security online." Back doors and other vulnerabilities cannot be kept secret from bad actors with the skills to exploit such weaknesses, disproportionately undermining human rights. Technical security experts confirm that mandates that require companies to introduce intentional vulnerabilities into secure products also undermine cybersecurity.

Analysis: Framing will be important to understand why worsening data protection and privacy is a marginal problem to care about over potentially more concrete Pro arguments, but it can be weighed with a more progressive eye towards the disproportionate impact on minority groups, especially those resisting oppression. Impacting out the end of the HRW card to talk more about general cybersecurity risks could be effective for explaining why we should worry about data privacy.

Warrant: Pushing out users whose content might create legal liability for platforms hurts users who rely on the internet to ensure their security.

McCombs, Emily. "This Bill is Killing Us": 9 Sex Workers On Their Lives in the Wake of FOSTA." Huffington Post, 17 May 2018.

https://www.huffpost.com/entry/sex-workers-sesta-fosta_n_5ad0d7d0e4b0edca2cb964d9.

On April 11, the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), which says websites can be held legally liable if their users post ads for prostitution, was signed into law. In the lead-up to its passage, the bill was responsible for the closure of a host of advertising and review sites used by sex workers, most prominently Craigslist Personals and Backpage, the latter of which was seized and shut down by the FBI. The bill was intended to fight sex trafficking, but it has had a dangerous effect on the many sex workers who have consensually chosen the profession and who relied on the internet and its tools to keep themselves safe and make a living. For many consensual sex workers, losing these free or low-cost advertising platforms means losing the ability to work indoors and the ability to screen clients — two major factors that contribute to a sex worker's overall safety. (People being forced or coerced into prostitution also benefit from client screening and not having to work on the streets, the bill's opponents point out.) Sex workers also rely on the safety tool of communal "bad date lists" — websites where sex workers share information on bad or dangerous clients. Sex workers say these too are being shut down in the wake of FOSTA's passage. Many of the dozens of sex workers I spoke with for this feature said opportunistic clients and pimps are taking advantage of the rapid changes, hoping to prey on the stressed community and on the workers they assume are desperate. "This bill will and already has been responsible for the murder, rape [and] arrest of sex workers and will further push trafficked people underground," says Arabelle Raphael, a 29-year-old sex worker in California.

Warrant: Anonymous activity on the internet creates liability concerns for platforms, but it is necessary for activists, journalists, and members of vulnerable communities.

Krahulcova, Lucie. "Anonymity Online is Important." Digital Rights Watch, 30 Apr. 2021. <https://digitalrightswatch.org.au/2021/04/30/explainer-anonymity-online-is-important/>.

In his 2015 report to the United Nations General Assembly, David Kaye, former Special Rapporteur on Freedom of Expression, studied the use of encryption and anonymity in digital communications. The report concluded that encryption and anonymity act as key enablers for individuals to exercise their rights to freedom of opinion and expression in the digital age and, as such, deserve strong protection. "Strong encryption and anonymity are fundamental for the protection of human rights in the digital age and are critical to individuals who face persecution because of their sexual orientation or gender identity. Anonymity has been a crucial tool for women and sexual minorities for self-expression, connecting, and mobilizing, and the use of anonymity online supports the most vulnerable groups." In spite of its nature of sheltering marginalized voices, anonymity is constantly under fire and the subject of court deliberations.

Impact: Repealing Section 230 would limit criticism of the government and enable authoritarian politics while undermining collective cybersecurity.

Human Rights Watch. "UN: Online Anonymity, Encryption Protects Rights." 17 Jun. 2015. <https://www.hrw.org/news/2015/06/17/un-online-anonymity-encryption-protect-rights>.

Digital technologies have enabled intrusive surveillance on an unprecedented scope and scale. Such surveillance allows governments to identify journalistic sources, government critics, or members of persecuted minority groups and expose them to reprisals. Ordinary users also face a range of online dangers, from abusive surveillance to victimization by cybercriminals and other malicious actors. The special rapporteur recognized that strong encryption and anonymity defends Internet users from such threats and creates a “zone of privacy to protect opinion and belief” and other rights. In recent years, many governments have sought to restrict access to strong encryption or limit anonymity online in the name of national security and public order. Russia and China have imposed real-name registration requirements on social media users or bloggers, limiting anonymous expression. The Chinese government is also considering new regulations to require technology companies to build “back doors” into hardware and software and has begun blocking encrypted web traffic. Government officials in the US and UK have expressed concern that increased use of encryption on social media services or mobile devices will make it more difficult to prevent terrorism. These officials have accused Internet companies of creating “zones of lawlessness” and “dark places” where terrorists and criminals can flourish because some communications may not be accessible to law enforcement. Prime Minister David Cameron of the UK has pledged to ensure that no communications will be unreachable by its security services, suggesting that applications that do not comply with access requirements might be banned. Other officials in the US and UK have urged technology companies to install back doors or other vulnerabilities to allow law enforcement to circumvent protections. Governments have an obligation to investigate and prosecute crimes and prevent terrorist attacks. But as the special rapporteur confirmed, “In the contemporary technological environment, intentionally compromising encryption, even for arguably legitimate purposes, weakens everyone’s security online.” Human rights defenders, journalists, and ordinary users rely on encryption, often implemented by the private sector, to secure their communications, Human Rights Watch said. Back doors and other vulnerabilities cannot be kept secret from bad actors with the skills to exploit such weaknesses, disproportionately undermining human rights. Technical security experts confirm that mandates that require companies to introduce intentional vulnerabilities into secure products also undermine cybersecurity.

AT: Repealing Section 230 would hold social media companies accountable for posts

Section 230 reform destroys the economy

1. **Turn → Repealing Section 230 would force companies to engage in more content moderation [Bambauer 20'](#)** Most people would like to see greater limitations on some sort of internet content, whether it be non-consensual pornography (“revenge porn”), anti-vaccination claims, political advocacy by foreign countries, or fake news more generally.
2. **Turn → This leads to a problem of scale and increased costs for platforms [Bambauer 20'](#)** The scale of the data means that platforms have to rely primarily on automated software programs—algorithms— to curate content. And algorithms, while constantly improving, make mistakes: They flag innocent content as suspect, and vice versa. Proposals that seek to force platforms to engage in more monitoring—especially analysis before content is publicly available—will push internet firms to favor removing challenged content over keeping it. That’s precisely the chilling effect that Section 230 was intended to avoid. Additional procedures, such as appeals for complaints and requirements to track posts, will increase costs for platforms. Right now, most popular internet sites do not charge their users; instead, they earn revenues through advertising. If costs increase enough, some platforms would need to charge consumers an admissions fee.
3. **Turn → Economic uncertainties have led to massive layoffs across the United States [Cox 23'](#)** Year to date, job cuts have soared to 270,416, an increase of 396% from the same period a year ago. The damage was especially bad in tech, which has announced 102,391 cuts so far in 2023. That’s a staggering increase of 38,487% from a year ago and good for 38% of all staff reductions. Tech already has cut 5% more than for all of 2022, according to the report, and is on pace to eclipse 2001, the worst year ever amid the dot-com bust.
4. **Impact → Tech layoffs lead to reduced consumer spending [Forbes 22'](#)** However, some media outlets paint a different picture, running headlines about recent layoffs and the possibility of more cuts to come. The major concern is that

announcements of layoffs could lead to a decrease in consumer spending, leading to lower reported earnings and potentially even more layoffs.

5. **Impact** → **Recessions have serious impacts on the economy Kindness 23'**

During an economic contraction aggregate demand declines, translating into a drop in sales for most businesses. Cyclical industries including manufacturing and energy tend to experience particularly sharp declines. Companies with high fixed costs like retailers and technology suppliers face a disproportionate hit to the bottom line as revenue declines. Manufacturers may face bloated inventories, forcing them to slow output until demand recovers.

Analysis: This response is strong because it has a unique impact in recession. Coupling this response with a discussion of court clog and the economic effect of frivolous litigation would make an even stronger link chain and make the argument more difficult to refute.

Turn: Repealing Section 230 would force companies to engage in more content moderation

Bambauer, Derek E. "How Section 230 reform endangers internet free speech." Brookings, July 1, 2020, <https://www.brookings.edu/articles/how-section-230-reform-endangers-internet-free-speech/>. Recently, Section 230 has come under increasing political pressure, from members of both political parties in Congress and the executive branch. Most people would like to see greater limitations on some sort of internet content, whether it be non-consensual pornography ("revenge porn"), anti-vaccination claims, political advocacy by foreign countries, or fake news more generally.

Turn: This leads to a problem of scale and increased costs for platforms

Bambauer, Derek E. "How Section 230 reform endangers internet free speech." Brookings, July 1, 2020, <https://www.brookings.edu/articles/how-section-230-reform-endangers-internet-free-speech/>. The major internet platforms have to manage massive amounts of data. Twitter gets half a billion posts every day. Facebook has over 1.7 billion active daily users. YouTube has over 720,000 hours of video uploaded to its site each day. The scale of the data means that platforms have to rely primarily on automated software programs—algorithms—to curate content. And algorithms, while constantly improving, make mistakes: They flag innocent content as suspect, and vice versa. Proposals that seek to force platforms to engage in more monitoring—especially analysis before content is publicly available—will push internet firms to favor removing challenged content over keeping it. That's precisely the chilling effect that Section 230 was intended to avoid. Additional procedures, such as appeals for complaints and requirements to track posts, will increase costs for platforms. Right now, most popular internet sites do not charge their users; instead, they earn revenues through advertising. If costs increase enough, some platforms would need to charge consumers an admissions fee. The ticket price might not be high, but it would affect people with less disposable income. That could widen the already existing digital divide. Even if Twitter earns enough money to keep its service free, the regulatory cost of these proposals could make it harder for start-up companies to compete with established internet companies.

Turn: Economic uncertainties have led to massive layoffs across the United States

Cox, Jeff. "Layoffs are up nearly fivefold so far this year with tech companies leading the way." CNBC, April 6, 2023, <https://www.cnbc.com/2023/04/06/layoffs-are-up-nearly-fivefold-so-far-this-year-with-tech-companies-leading-the-way.html>. Companies announced nearly 90,000 layoffs in March, a sharp step up from the previous month and a giant acceleration from a year ago, outplacement firm Challenger, Gray & Christmas reported Thursday. Planned layoffs totaled 89,703 for the period, an increase of 15% from February. Year to date, job cuts have soared to 270,416, an increase of 396% from the same period a year ago. The damage was especially bad in tech, which has announced 102,391 cuts so far in 2023. That's a staggering increase of 38,487% from a year ago and good for 38% of all staff reductions. Tech already has cut 5% more than for all of 2022, according to the report, and is on pace to eclipse 2001, the worst year ever amid the dot-com bust. "We know companies are approaching 2023 with caution, though the economy is still creating jobs," said Andrew Challenger, senior vice president of Challenger, Gray & Christmas. "With rate hikes continuing and companies' reigning in costs, the large-scale layoffs we are seeing will likely continue."

Impact: Tech layoffs lead to reduced consumer spending

Forbes. "More Layoffs On The Horizon? Does This Push Us Into A Recession?" Forbes, September 12, 2022, <https://www.forbes.com/sites/qai/2022/09/12/more-layoffs-on-the-horizon-does-this-push-us-into-a-recession/?sh=68b7bf7a63e9>.

Part of the reason that the NBER didn't call for a recession is that it hasn't been all bad news with the economy. Many defend the economy's strength at present. The theory being that as long as we all are making money, we should all have money to spend, and keep the economy rolling along. It's difficult to call for a recession when there's still money to be made by those looking for work. However, some media outlets paint a different picture, running headlines about recent layoffs and the possibility of more cuts to come. The major concern is that announcements of layoffs could lead to a decrease in consumer spending, leading to lower reported earnings and potentially even more layoffs.

Impact: Recessions have serious impacts on the economy

Kindness, David. "The Impact of Recessions on Businesses." Investopedia, Aug 30 2023, <https://www.investopedia.com/articles/economics/08/recession-affecting-business.asp>. In a recession, nothing hurts a business quite so much as when the register stops ringing as often, or when orders slow to a trickle. During an economic contraction aggregate demand declines, translating into a drop in sales for most businesses. Cyclical industries including manufacturing and energy tend to experience particularly sharp declines. Companies with high fixed costs like retailers and technology suppliers face a disproportionate hit to the bottom line as revenue declines. Manufacturers may face bloated inventories, forcing them to slow output until demand recovers. The souring of consumer demand lowers the expected returns on investment for advertising and marketing spending, prompting cuts in those budgets. That can lead to revenue slumps for media companies whether they publish, broadcast, or sell ads online.

AT: Repealing Section 230 protects users

Users are already protected in the status quo

1. **Non-Unique:** Social media companies already moderate in the squo [Johnson 21'](#) These companies have powerful economic incentives for keeping harmful or illegal content off their platforms. The first is to protect their brand and reputation, exemplified by the recent “techlash,” or backlash against major tech companies that arose from widespread disinformation on social media surrounding the 2016 U.S. elections. This negative attention chases users away from companies’ platforms and motivates lawmakers to consider policies that would be detrimental to companies’ business models. The second is advertising revenue. Advertisers do not want their products and services promoted next to harmful or illegal content.
2. **Non-Unique:** Victims can already sue users and sites who benefit from harm [Johnson 21'](#) Nothing in the law prevents victims of crime and terrorism from taking civil action against their attackers. It only prevents them from taking civil action against the websites and online platforms their attackers used to commit acts of crime or terrorism. If an online service plays any part in the development of illegal content, or induces illegal behavior, it cannot claim Section 230 protection. The online services the section does protect are the websites and platforms that act as passive intermediaries.
3. **Turn →** If companies were held liable for algorithmic recommendations, they would not moderate at all [Rozenshtein 23'](#) As with Zeran, the best argument for a broad reading of Section 230 in the context of algorithmic recommendation is that it would effectuate the primary goal of the statute: encouraging platforms to moderate content and provide tools for users to moderate that content. The use of algorithms for moderation—including content removal, downranking, and “shadowbanning”—is increasingly the key mechanism by which platforms moderate objectionable content. If platforms are held liable for personalized recommendations, they may decide not to perform any automated screening or ranking at all, out of an abundance of caution.
4. **Turn →** Section 230 enables content moderation [Falcon 23'](#) Platforms are private entities and private actors, even Big Tech, have a First Amendment right to take down speech they do not wish to carry. As Spencer Overton told the lawmakers at

the hearing, the reality is that the First Amendment gives private companies the “right to exclude content as they see fit.” What Section 230 does is protect those companies, as well as much smaller companies and users, from other types of civil liability for their decisions to distribute third-party content and to moderate that content.

- 5. Impact: Increased content moderation could harm users** [Douek 21'](#) Because content moderation at scale will never be perfect, the question is always which side of the line to err on when enforcing rules. Stricter rules and more heavy-handed enforcement necessarily means more false positives: That is, more valuable speech will be taken down. This problem is exacerbated by the increased reliance on automated moderation to take down content at scale: These tools are blunt and stupid. If told to take down more content, algorithms won't think twice about it. They can't evaluate context or tell the difference between content glorifying violence or recording evidence of human rights abuses, for example.

Analysis: This response argues that existing measures are sufficient to protect users and that any changes could backfire on consumers. Teams will benefit from being able to point to specific examples of Section 230 not applying and companies being held accountable to strengthen this response.

Non-Unique: Social media companies already moderate in the squo

Johnson, Ashley and Daniel Castro. “Fact-Checking the Critiques of Section 230: What Are the Real Problems?.” ITIF, February 22, 2021, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>.

While some bad actors may benefit from Section 230 protections, the vast majority of the beneficiaries are legitimate, reputable sites and services that do not take advantage of the law. These companies have powerful economic incentives for keeping harmful or illegal content off their platforms. The first is to protect their brand and reputation, exemplified by the recent “techlash,” or backlash against major tech companies that arose from widespread disinformation on social media surrounding the 2016 U.S. elections. This negative attention chases users away from companies' platforms and motivates lawmakers to consider policies that would be detrimental to companies' business models. The second is advertising revenue. Advertisers do not want their products and services promoted next to harmful or illegal content. If platforms gain a reputation for hosting this content, they risk losing advertiser revenue. And a third incentive comes from consumers, most of whom do not want to use online services that are full of harmful or illegal content.

Non-Unique: Victims can already sue users and sites who benefit from harm

Johnson, Ashley and Daniel Castro. “Fact-Checking the Critiques of Section 230: What Are the Real Problems?.” ITIF, February 22, 2021, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>.

Section 230's supporters call this line of reasoning into question. Nothing in the law prevents victims of crime and terrorism from taking civil action against their attackers. It only prevents them from taking civil action against the websites and online platforms their attackers used to commit acts of crime or terrorism. If an online service plays any part in the development of illegal content, or induces illegal behavior, it cannot claim Section 230 protection. The online services the section does protect are the websites and platforms that act as passive intermediaries: social media platforms on which criminals and terrorists recruit, online messaging services on which criminals and terrorists communicate, and websites on which criminals and terrorists post illegal content. In other words, Section 230 “holds individuals responsible for their actions online, not the tools that they use.”

Turn: If companies were held liable for algorithmic recommendations, they would not moderate at all

Rozenshtein, Alan Z. “Interpreting the ambiguities of Section 230.” Brookings, October 26, 2023, <https://www.brookings.edu/articles/interpreting-the-ambiguities-of-section-230/>.

But the question is not going away. Algorithmic recommendations are at the heart of modern social media—and courts, including the Supreme Court, will no doubt continue to grapple with whether Section 230 protects platforms for such recommendations. As with Zeran, the best argument for a broad reading of Section 230 in the context of algorithmic recommendation is that it would effectuate the primary goal of the statute: encouraging platforms to moderate content and provide tools for users to moderate that content. The use of algorithms for moderation—including content removal, downranking, and “shadowbanning”—is increasingly the key mechanism by which platforms moderate objectionable content. If platforms are held liable for personalized recommendations, they may decide not to perform any automated screening or ranking at all, out of an abundance of caution.

Turn: Section 230 enables content moderation

Falcon, Ernesto. “Bad Content Moderation Is Bad, And Government Interference Can Make It Even Worse.” EFF, March 31, 2023, <https://www.eff.org/deeplinks/2023/03/bad-content-moderation-bad-and-government-interference-can-make-it-even-worse>.

The claim often made by some Members of Congress, including Committee Chair Cathy McMorris Rodgers (R-WA), is that Section 230 lies at the heart of the censorship. The statement misunderstands the issue. Platforms are private entities and, as we've explained many times before, private actors, even Big Tech, have a First Amendment right to take down speech they do not wish to carry. As Spencer Overton told the lawmakers at the hearing, the reality is that the First Amendment gives private companies the “right to exclude content as they see fit.” What Section 230 does is protect those companies, as well as much smaller companies and users, from other types of civil liability for their decisions to distribute third-party content and to moderate that content.

Impact: Increased content moderation could harm users

Douek, Evelyn. “More Content Moderation Is Not Always Better.” Wired, June 2, 2021, <https://www.wired.com/story/more-content-moderation-not-always-better/>

There are other trade-offs. Because content moderation at scale will never be perfect, the question is always which side of the line to err on when enforcing rules. Stricter rules and more heavy-handed enforcement necessarily means more false positives: That is, more valuable speech will be taken down. This problem is exacerbated by the increased reliance on automated moderation to take down content at scale: These tools are blunt and stupid. If told to take down more content, algorithms won't think twice about it. They can't evaluate context or tell the difference between content glorifying violence or recording evidence of human rights abuses, for example. The toll of this kind of approach has been clear during the Palestinian-Israeli conflict of the past few weeks as Facebook has repeatedly removed essential content from and about Palestinians. This is not a one-off. Maybe can should not always imply ought—especially as we know that these errors tend to fall disproportionately on already marginalized and vulnerable communities.

AT: Repealing Section 230 strengthens democracy

Company censorship would be overly broad, targeting minority opinions

1. **Non-unique:** Companies are already incentivized to reduce disinformation in the squo [Johnson 21'](#) These companies have powerful economic incentives for keeping harmful or illegal content off their platforms. The first is to protect their brand and reputation, exemplified by the recent “teclash,” or backlash against major tech companies that arose from widespread disinformation on social media surrounding the 2016 U.S. elections. This negative attention chases users away from companies’ platforms and motivates lawmakers to consider policies that would be detrimental to companies’ business models. The second is advertising revenue. Advertisers do not want their products and services promoted next to harmful or illegal content.
2. **Turn →** Increased moderation disproportionately targets Black users [Ghaffary 19'](#) The results were astounding. Tweets written by self-identified African American users were, on average, found to be 1.5 times more likely to be flagged as offensive. Researchers then applied this test data into a larger algorithmic model run using natural language processing on 56 million tweets and saw that these biases were only further reinforced.
3. **Turn →** A repeal of Section 230 has devastating effects on freedom of speech [Kelley 20'](#) Section 230 doesn’t only allow sites that host speech, including controversial views, to exist. It allows them to exist without putting their thumbs on the scale by censoring controversial or potentially problematic content. And because what is considered controversial is often shifting, and context- and viewpoint-dependent, it’s important that these views are able to be shared. “Defund the police” may be considered controversial speech today, but that doesn’t mean it should be censored. “Drain the Swamp,” “Black Lives Matter,” or even “All Lives Matter” may all be controversial views, but censoring them would not be beneficial.
4. **Alternative:** Targeted carve-outs are a better solution [Warner 23'](#) The way we communicate as a society has changed drastically over the last 25 years, it’s time for our laws to catch up,” said Sen. Hirono, a member of the Senate Judiciary Committee. “The SAFE TECH Act targets the worst abuses perpetrated on internet platforms to better protect our children and our communities from the very real harms of social media.”

Analysis: This response is strong because it highlights a genuine side effect of moderation, which is that minority opinions may be targeted. The Affirmative is not likely to dispute that moderation increases in a world without Section 230 and will be forced to only argue against the impact of moderation, restricting their possible responses.

Non-unique: Companies are already incentivized to reduce disinformation in the squo

Johnson, Ashley and Daniel Castro. "Fact-Checking the Critiques of Section 230: What Are the Real Problems?." ITIF, February 22, 2021,

<https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>.

While some bad actors may benefit from Section 230 protections, the vast majority of the beneficiaries are legitimate, reputable sites and services that do not take advantage of the law. These companies have powerful economic incentives for keeping harmful or illegal content off their platforms. The first is to protect their brand and reputation, exemplified by the recent "teclash," or backlash against major tech companies that arose from widespread disinformation on social media surrounding the 2016 U.S. elections. This negative attention chases users away from companies' platforms and motivates lawmakers to consider policies that would be detrimental to companies' business models. The second is advertising revenue. Advertisers do not want their products and services promoted next to harmful or illegal content. If platforms gain a reputation for hosting this content, they risk losing advertiser revenue. And a third incentive comes from consumers, most of whom do not want to use online services that are full of harmful or illegal content.

Turn: Increased moderation disproportionately targets Black users

Ghaffary, Shirin. "The algorithms that detect hate speech online are biased against black people." Vox, August 15, 2019,

<https://www.vox.com/recode/2019/8/15/20806384/social-media-hate-speech-bias-black-african-american-facebook-twitter>.

They first gathered more than 100,000 tweets used in two widely cited academic data sets. These tweets had been hand-flagged by human beings with labels such as being "hate speech," "offensive," or "abusive." The results were astounding. Tweets written by self-identified African American users were, on average, found to be 1.5 times more likely to be flagged as offensive. Researchers then applied this test data into a larger algorithmic model run using natural language processing on 56 million tweets and saw that these biases were only further reinforced. Taking their research a step further, Sap and his colleagues decided to do something interesting. They primed workers labeling the same data to think about the user's dialect and race when deciding whether the tweet was offensive or not. Their results showed that when moderators knew more about the person tweeting, they were significantly less likely to label that tweet as potentially offensive.

Turn: A repeal of Section 230 has devastating effects on freedom of speech

Kelley, Jason. "Section 230 is Good, Actually." EFF, December 3, 2020, <https://www.eff.org/deeplinks/2020/12/section-230-good-actually>.

And Section 230 doesn't only allow sites that host speech, including controversial views, to exist. It allows them to exist without putting their thumbs on the scale by censoring controversial or potentially problematic content. And because what is considered controversial is often shifting, and context- and viewpoint- dependent, it's important that these views are able to be shared. "Defund the police" may be considered controversial speech today, but that doesn't mean it should be censored. "Drain the Swamp," "Black Lives Matter," or even "All Lives Matter" may all be controversial views, but censoring them would not be beneficial. Online platforms' censorship has been shown to amplify existing imbalances in society—sometimes intentionally and sometimes not. The result has been that more often than not, platforms are more likely to censor disempowered individuals and communities' voices. Without Section 230, any online service that did continue to exist would more than likely opt for censoring more content—and that would inevitably harm marginalized groups more than others.

Alternative: Targeted carve-outs are a better solution

Warner, Mark. "Legislation to Reform Section 230 Reintroduced in the Senate, House." Mark R. Warner, February 28, 2023,

<https://www.warner.senate.gov/public/index.cfm/2023/2/legislation-to-reform-section-230-reintroduced-in-the-senate-house>.

"Social media platforms allow people to connect all across the world—but they also cause great pain and suffering, being used as a tool for cyberbullying, stalking, spreading hate, and more. The way we communicate as a society has changed drastically over the last 25 years, it's time for our laws to catch up," said Sen. Hirono, a member of the Senate Judiciary Committee. "The SAFE TECH Act targets the worst abuses perpetrated on internet platforms to better protect our children and our communities from the very real harms of social media."

AT: Repealing Section 230 promotes the free exchange of ideas

Repealing Section 230 causes court clog, hurting the free exchange of ideas

1. **Turn →** **The American court system is substantially overburdened in the squo [Kluger 16'](#)** Civil cases in federal courts take an average of nearly two years to reach a resolution from the time of the initial filing, according to a 2010 government study, with the Washington, D.C., court topping the list at an average 40.7 months. The average patent case takes 2.4 years. Class actions like the Exxon Valdez oil-spill case can drag on for decades.
2. **Turn →** **Adversarial systems of justice are bad [Thomas 23'](#)** One of the main problems with the adversarial system is that it is too focused on winning rather than finding the truth and promoting justice. It may seem a strange thing for a litigator and trial advocate like me to say, but in this system, the goal is to win the case, and not necessarily to uncover the truth. Lawyers are incentivised to put the case in the most favourable light for their client, even if it may not be the most intellectually honest or accurate view of the case.
3. **Turn →** **Repealing Section 230 leads to frivolous lawsuits, amplifying the court system's problems [Johnson 21'](#)** The United States' adversarial system is also very expensive, especially for defendants hit repeatedly with frivolous lawsuits. Bringing up Section 230 so early in a court case is important for companies, both large and small, because it lowers the cost of litigation. Much of the conversation on issues surrounding Section 230 focuses on tech's big companies, such as Facebook and Google, that can likely afford these higher legal costs. But there are many small tech companies that could not afford a long, drawn-out lawsuit every time a user posts something objectionable on their platform.
4. **Impact:** **Because of court clogs, judges are pushing for settlements rather than resolutions [Land 21'](#)** In a 2015 patent infringement lawsuit in the Southern District of New York, Judge Gregory Woods canceled a Nov. 29 trial, citing a criminal trial now scheduled for that date. After his June 15 order, U.S. Magistrate Judge Sarah Netburn asked the parties for settlement dates. Another judge in New Mexico cited the court's backlog as a reason to grant final approval of a nearly \$4.2 million settlement involving a class of truck drivers seeking unpaid overtime wages. Settling the 2019 class action would avoid "significant delay," U.S. Magistrate Judge Gregory Fouratt said in an April 9 order.

Analysis: This response provides a unique disadvantage to Section 230 repeal in the form of court clog, which could overburden an already struggling court system. Teams can couple this response with a discussion of the negative economic effects of litigation for an even stronger rebuttal.

Turn: The American court system is substantially overburdened in the squo

Kluger, Jeffrey. "Why Is the Court System So Slow?" Time, June 30, 2016, <https://time.com/4389196/why-is-the-court-system-so-slow/>.

It's no secret that the American justice system moves with the speed of a tectonic plate. Defendants who can't afford bail languish in jail for years before going to trial. Civil cases in federal courts take an average of nearly two years to reach a resolution from the time of the initial filing, according to a 2010 government study, with the Washington, D.C., court topping the list at an average 40.7 months. The average patent case takes 2.4 years. Class actions like the Exxon Valdez oil-spill case can drag on for decades. There are a lot of reasons for the crawling pace, but perhaps the biggest factor is money, especially in the state systems.

Turn: Adversarial systems of justice are bad

Thomas, Leslie. "The adversarial system of justice - a flawed approach." Counsel, May 2023, <https://www.counselmagazine.co.uk/articles/the-adversarial-system-of-justice-a-flawed-approach->.

One of the main problems with the adversarial system is that it is too focused on winning rather than finding the truth and promoting justice. It may seem a strange thing for a litigator and trial advocate like me to say, but in this system, the goal is to win the case, and not necessarily to uncover the truth. Lawyers are incentivised to put the case in the most favourable light for their client, even if it may not be the most intellectually honest or accurate view of the case. Lawyers can't knowingly mislead the court, but they can (and indeed must) present the facts in a polemical way in order to deliver the desired outcome for their client.

Turn: Repealing Section 230 leads to frivolous lawsuits, amplifying the court system's problems

Johnson, Ashley and Daniel Castro. "Fact-Checking the Critiques of Section 230: What Are the Real Problems?." ITIF, February 22, 2021,

<https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>.

However, there are two sides to this story. The United States' adversarial system is also very expensive, especially for defendants hit repeatedly with frivolous lawsuits. Bringing up Section 230 so early in a court case is important for companies, both large and small, because it lowers the cost of litigation. Much of the conversation on issues surrounding Section 230 focuses on tech's big companies, such as Facebook and Google, that can likely afford these higher legal costs. But there are many small tech companies that could not afford a long, drawn-out lawsuit every time a user posts something objectionable on their platform. Faced with much higher legal costs, platforms may be forced to shut down, offset their costs by charging for services they previously offered for free, or drastically limit third-party content. Any of these situations would be detrimental for users, who benefit both from the diversity of websites and platforms available to them, and from being able to access many of these online services for free.

Impact: Because of court clogs, judges are pushing for settlements rather than resolutions

Land, Greg and Amanda Bronstad. "Can We Talk? Eyeing COVID-Clogged Dockets, Judges Push Civil Cases to Settle." Law.com, July 30, 2021,

<https://www.law.com/2021/07/30/can-we-talk-eyeing-covid-clogged-dockets-judges-push-civil-cases-to-settle/?slreturn=20231108090942>.

But there has been a strong push for settlement. "The backlog factor weighs heavily in favor of courts really advocating for private resolution because the reality is litigants are having to bear the cost of extended and protracted litigation," Baker said. In a 2015 patent infringement lawsuit in the Southern District of New York, Judge Gregory Woods canceled a Nov. 29 trial, citing a criminal trial now scheduled for that date. After his June 15 order, U.S. Magistrate Judge Sarah Netburn asked the parties for settlement dates. Another judge in New Mexico cited the court's backlog as a reason to grant final approval of a nearly \$4.2 million settlement involving a class of truck drivers seeking unpaid overtime wages. Settling the 2019 class action would avoid "significant delay," U.S. Magistrate Judge Gregory Fouratt said in an April 9 order.

AT: Section 230 protects sex traffickers

Targeted carve-outs already exist and solve this argument

1. **Non-Unique:** Section 230 has been found to not protect social media companies in instances of sex trafficking [Smith '21](#) the Texas Supreme Court ruled that Facebook is not shielded by Section 230 for sex-trafficking recruitment that occurs on its platform. “We do not understand Section 230 to ‘create a lawless no-man’s-land on the Internet,’” the court wrote. “Holding internet platforms accountable for the words or actions of their users is one thing, and the federal precedent uniformly dictates that Section 230 does not allow it. Holding internet platforms accountable for their own misdeeds is quite another thing. This is particularly the case for human trafficking.”
2. **Non-Unique:** There is already a sex-trafficking exception for Section 230 [Carome '18](#) FOSTA attempts to address the conduct highlighted in Congress's investigation of Backpage by amending federal sex trafficking laws, creating a new federal law criminalizing the promotion or facilitation of prostitution, and amending Section 230 to exclude from its protection certain conduct that would constitute either a violation of federal sex trafficking laws or a criminal violation of the new federal criminal prostitution law.
3. **Non-Unique:** There are other existing carve-outs to Section 230 in the squo, including discrimination-based ones [Johnson '21](#) In addition, according to the Fair Housing Council of San Fernando Valley v. Roommates.com (2008) and FTC v. Accusearch (2009) court decisions, these websites and platforms that induce or encourage the development of illegal content are exempt from Section 230’s liability protections.
4. **Non-Unique:** Websites that actively benefit from illegal activity are already exempt from Section 230 [Johnson '21](#) In practice, this means that if an online service engages in illegal activity—such as knowingly aiding and abetting terrorists—federal law enforcement can take action against the service. But online services are not legally responsible for criminals misusing their platform. Some countries’ intermediary liability laws include a provision that holds online services responsible if they were aware or reasonably should have been aware of criminal conduct on their platforms,

Analysis: This response is strong because it clearly situates Section 230 in context with other legislation and argues that there are already existing exemptions for the worst crimes. Teams will want to focus on clearly explaining the negative impact from a repeal in order to justify carve-outs as an alternative.

Non-Unique: Section 230 has been found to not protect social media companies in instances of sex trafficking

Smith, Michael D. and Marshall Van Alstyne. “It’s Time to Update Section 230.” Harvard Business Review, August 12, 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>. The courts have recently begun to adopt this line of thinking. In a June 25, 2021 decision, for example, the Texas Supreme Court ruled that Facebook is not shielded by Section 230 for sex-trafficking recruitment that occurs on its platform. “We do not understand Section 230 to ‘create a lawless no-man’s-land on the Internet,’” the court wrote. “Holding internet platforms accountable for the words or actions of their users is one thing, and the federal precedent uniformly dictates that Section 230 does not allow it. Holding internet platforms accountable for their own misdeeds is quite another thing. This is particularly the case for human trafficking.”

Non-Unique: There is already a sex-trafficking exception for Section 230

Carome, Patrick J. and Ari Holtzblatt. "Congress Enacts Law Creating a Sex Trafficking Exception From the Immunity Provided by Section 230 of the Communications Decency Act." WilmerHale, April 16, 2018, <https://www.wilmerhale.com/insights/client-alerts/2018-04-16-congress-enacts-law-creating-a-sex-trafficking-exception-from-the-immunity-provided-by-section-230-of-the-communications-decency-act>. FOSTA attempts to address the conduct highlighted in Congress's investigation of Backpage by amending federal sex trafficking laws, creating a new federal law criminalizing the promotion or facilitation of prostitution, and amending Section 230 to exclude from its protection certain conduct that would constitute either a violation of federal sex trafficking laws or a criminal violation of the new federal criminal prostitution law. It remains to be seen how broadly courts will construe these new provisions—and whether they risk ensnaring online providers whose conduct is far removed from the conduct that triggered the new law.

Non-Unique: There are other existing carve-outs to Section 230 in the squo, including discrimination-based ones

Johnson, Ashley and Daniel Castro. "Fact-Checking the Critiques of Section 230: What Are the Real Problems?." ITIF, February 22, 2021, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>. In addition, according to the Fair Housing Council of San Fernando Valley v. Roommates.com (2008) and FTC v. Accusearch (2009) court decisions, these websites and platforms that induce or encourage the development of illegal content are exempt from Section 230's liability protections. But not all courts have followed this precedent, meaning some bad actors have avoided liability. The danger of adding a "good faith" requirement to Section 230(c)(1) is that it may subject online services to more expensive litigation than they already face.

Non-Unique: Websites that actively benefit from illegal activity are already exempt from Section 230

Johnson, Ashley and Daniel Castro. "Fact-Checking the Critiques of Section 230: What Are the Real Problems?." ITIF, February 22, 2021, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>. In practice, this means that if an online service engages in illegal activity—such as knowingly aiding and abetting terrorists—federal law enforcement can take action against the service. But online services are not legally responsible for criminals misusing their platform. Some countries' intermediary liability laws include a provision that holds online services responsible if they were aware or reasonably should have been aware of criminal conduct on their platforms, but once again the danger of such a provision is that it could make it more difficult for online services to dismiss frivolous lawsuits, dramatically raising the costs of operating an online service that relies on third-party content, or motivate online services to engage in less monitoring to reduce their potential liability.

AT: Repealing Section 230 protects children online.

Repealing Section 230 would be ineffective at protecting children; encryption wars would cause the process to take forever.

1. [Bambauer '21](#) repeal of Section 230 is also likely in the medium term to fuel another round of the encryption wars. The policy goal of reducing undesirable content such as incitement and child sex abuse material will probably encourage law enforcement agencies to renew their push for limits on encryption. Most observers would support steps that would reduce harms to children, but it is not clear how much of a barrier encryption currently creates for law enforcement. A New York Times investigation found that law enforcement agencies devoted to investigating CSAM were “understaffed and underfunded”; the Justice Department has not even bothered to write reports that are required under federal anti-CSAM legislation. The past few cycles of the encryption wars have largely ended in stalemates.
2. **Section 230 cannot be held responsible for harm towards children because it does not shield criminals from state and federal laws for illicit activity.** [Szabo '21](#) The truth is that Section 230 is the law that makes our internet a better place. Section 230 provides no shield to criminals from enforcement of state, local and federal laws, whether they commit their crimes on or off the internet. Section 230 was irrelevant in this case because the law provides no protection for platforms that contribute to criminal wrongdoing. The law also offers no protection for child exploitation. Section 230 does not shield platforms from federal criminal law.
3. **Section 230 actually allows social media companies to make the Internet a safer place for kids and engage in moderation practices.** [Szabo '21](#) Online platforms are able to moderate and make themselves more appropriate for children because of Section 230. From YouTube Kids to forced opt-in tagging and screening for child-friendly content, YouTube works on new content moderation guidelines each day, dedicated to making our children safe online. Without Section 230, YouTube has no shield behind which to help build its family-friendly practices. Section 230 saves platforms like YouTube from a “moderator's dilemma,” where they would need to refuse to moderate content on their sites to achieve court-awarded protections from conduit liability that predated Section 230.

Analysis: The best argument against the pro’s stance is a no solvency claim: social media is going to be harmful for kids no matter what, and the only true solvency is limiting their use and keeping them off of apps. Moreover, the evidence above shows how repealing Section 230 would be largely ineffective, and Section 230 actually makes the Internet a safer place for children by allowing moderation and enforcing laws against illicit activity.

Bambauer, Derek E. "What does the day after Section 230 reform look like?", Brookings Institute, 22 Jan 2021, <https://www.brookings.edu/articles/what-does-the-day-after-section-230-reform-look-like/>.

A reform or repeal of Section 230 is also likely in the medium term to fuel another round of the encryption wars. The policy goal of reducing undesirable content such as incitement and child sex abuse material (CSAM) will probably encourage law enforcement agencies to renew their push for limits on encryption, particularly the end-to-end variety present in apps such as Signal. Most observers would support steps that would reduce harms to children, but it is not clear how much of a barrier encryption currently creates for law enforcement. For example, in 2019, federal courts authorized 3225 wiretaps. Of those, 121, or 3.75%, were encrypted; in 104 of those, law enforcement could not ultimately decrypt the information exchanged. A New York Times investigation found that law enforcement agencies devoted to investigating CSAM were "understaffed and underfunded"; the Justice Department has not even bothered to write reports that are required under federal anti-CSAM legislation. If encryption use by criminals is on the rise, calls for back doors, key escrow, and other limits on apps' capabilities are likely to resonate. There are, however, important tradeoffs for privacy and security of user communications, especially if those users are political dissidents, journalists, or others with well-founded fears of surveillance. The past few cycles of the encryption wars have largely ended in stalemates, but another flare-up is likely brewing.

Warrant: Section 230 cannot be held responsible for harm towards children because it does not shield criminals from state and federal laws for illicit activity.

Szabo, Carl. "Why Section 230 protects kids, and what its critics get wrong", Protocol, 21 Dec 2020, <https://www.protocol.com/section-230-protects-kids>.

Despite current debate over harmful content online and Section 230 of the Communications Decency Act, the truth is that Section 230 is the law that makes our internet a better place. Section 230 is often blamed for all bad content and illegal activity on the internet, but under the law, any activity that's criminal offline is criminal online. In fact, Section 230 provides no shield to criminals from enforcement of state, local and federal laws, whether they commit their crimes on or off the internet. Take the horrific example of Backpage.com, an online platform that enabled sex trafficking online. In 2018, the federal government seized control of the website, shut it down and threw its owners in prison. The federal government swooped in and enforced federal criminal law. In fact, Section 230 was irrelevant in this case because the law provides no protection for platforms that contribute to criminal wrongdoing. The law also offers no protection for child exploitation or copyright violations. Similarly, Section 230 offered no protection for online platform Silk Road: an anything-goes marketplace where users could sell guns and drugs and even contract for murder. The government shut down this website and enforced criminal law on its owners because, again, Section 230 does not shield platforms from federal criminal law.

Warrant: Section 230 actually allows social media companies to make the Internet a safer place for kids and engage in moderation practices.

Szabo, Carl. "Why Section 230 protects kids, and what its critics get wrong", Protocol, 21 Dec 2020, <https://www.protocol.com/section-230-protects-kids>.

Indeed, online platforms are able to moderate and make themselves more appropriate for children because of Section 230. From YouTube Kids to forced opt-in tagging and screening for child-friendly content, YouTube works on new content moderation guidelines each day, dedicated to making our children safe online. Without Section 230, YouTube has no shield behind which to help build its family-friendly practices. Section 230 saves platforms like YouTube from a "moderator's dilemma," where they would need to refuse to moderate content on their sites to achieve court-awarded protections from conduit liability that predated Section 230, or end the practice of hosting user-created content easily and seamlessly.

AT: Repealing Section 230 reduces hate speech

Repealing Section 230 would be ineffective at reducing hate speech online.

1. [Wu '20](#) And if you ultimately don't trust the platforms to do a good job without legal threats, then what you really want is not Section 230 repeal, but a new anti-hate speech law – one that would create a new obligation on the platforms to take down incitements to violence, true threats, deliberate and intentional harassment, and perhaps even good old-fashioned hate speech. The First Amendment might even allow some of these bans. They want the platforms to adopt a different kind of content moderation policy, one where the platform would aim to be scrupulously fair in permitting all sides to say what they want, without being labeled “hate speech” or “misinformation.” That law might or might not be constitutional depending on how it is done. But, to repeat, abolishing 230 certainly doesn't get you there.
2. **Social media companies already have regulations in place to ban hate speech, and these efforts have only been increasing.** [Mchangama '23](#) In 2014, only 38 percent of the analyzed platforms prohibited “hate speech” or “hateful content.” By 2018, this percentage had risen to 88 percent—where it remains today. Similarly, a decade ago, only 25 percent of platforms banned incitement to or threats of violence on the basis of protected characteristics, but today, 88 percent of the platforms do. In 2014, no platforms banned dehumanizing language, denial or mocking of historical atrocities, harmful stereotypes, or conspiracy theories in their hate speech policies—none of which are mentioned by Article 20. By 2023, 63 percent of the platforms banned dehumanization, 50 percent banned denial or mocking of historical atrocities, 38 percent banned harmful stereotypes, and 25 percent banned conspiracy theories.
3. **Repealing Section 230 would suppress the voices of minority populations.** [Johnson '21](#) removing Section 230 would also have a detrimental effect on marginalized populations. If websites and online platforms start censoring potentially objectionable content in order to avoid liability, controversial speech will likely be the first to go. In a world where “controversial” is defined by the majority, the Internet would become yet another forum wherein the majority has the power to censor minority opinions. 64 At the same time, if platforms are not shielded from liability, they will do less to moderate online abuse and hate speech.

Analysis: The responses against this argument should sow sufficient doubt about repealing Section 230 as a solution to combating hate speech. Likely, repealing Section 230 would be largely ineffective and might even make the situation worse. The statistic that 88% of companies already monitor hate speech is pretty convincing that much more regulation might contradict the First Amendment.

What should the left and right be asking for? On the left, if you think there is too much conspiracy theory, insane incitement to violence, and threats out there you want stronger content moderation. And if you ultimately don't trust the platforms to do a good job without legal threats, then what you really want is not Section 230 repeal, but a new anti-hate speech law — one that would create a new obligation on the platforms to take down incitements to violence, true threats, deliberate and intentional harassment, and perhaps even good old-fashioned hate speech. The First Amendment might even allow some of these bans. What conservatives really seem to want, meanwhile, is something more like a version of the “fairness doctrine” adapted for social media. (Ignore the fact that conservatives used to insist that the fairness doctrine was an unconstitutional left-wing conspiracy to destroy talk radio). In other words, they want the platforms to adopt a different kind of content moderation policy, one where the platform would aim to be scrupulously fair in permitting all sides to say what they want, without being labeled “hate speech” or “misinformation.” That law might or might not be constitutional depending on how it is done. But, to repeat, abolishing 230 certainly doesn't get you there.

Social media companies already have regulations in place to ban hate speech, and these efforts have only been increasing.

Mchangama, Jacob. “Free Speech Social Media Doesn't Exist”, Foreign Policy, 14 July 2023, <https://foreignpolicy.com/2023/07/14/twitter-threads-social-media-free-speech-hate-speech/>. So how do platform hate speech policies measure up to these standards? In some areas, they are aligned closely. A decade ago, more than half of the eight platforms did not have an explicit hate speech prohibition. In 2014, only 38 percent of the analyzed platforms prohibited “hate speech” or “hateful content.” By 2018, this percentage had risen to 88 percent—where it remains today. Similarly, a decade ago, only 25 percent of platforms banned incitement to or threats of violence on the basis of protected characteristics, but today, 88 percent of the platforms do. These changes generally align with the prohibition on incitement to hatred under IHRL. In other ways, however, platforms' hate speech restrictions have mushroomed beyond the human rights framework. In 2014, no platforms banned dehumanizing language, denial or mocking of historical atrocities, harmful stereotypes, or conspiracy theories in their hate speech policies—none of which are mentioned by Article 20. By 2023, 63 percent of the platforms banned dehumanization, 50 percent banned denial or mocking of historical atrocities, 38 percent banned harmful stereotypes, and 25 percent banned conspiracy theories. It is doubtful that these prohibitions satisfy Article 19's requirements of legality and necessity.

Repealing Section 230 would suppress the voices of minority populations.

Johnson, Ashley and Daniel Castro. “Fact-Checking the Critiques of Section 230: What Are the Real Problems?” ITIF, February 22, 2021, <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/>.

However, limiting or removing Section 230 would also have a detrimental effect on marginalized populations. If websites and online platforms start censoring potentially objectionable content in order to avoid liability, controversial speech will likely be the first to go. In a world where “controversial” is defined by the majority, the Internet would become yet another forum wherein the majority has the power to censor minority opinions. 64 At the same time, if platforms are not shielded from liability, they will do less to moderate online abuse and hate speech.

AT: Repealing Section 230 limits Big Tech's power.

Repealing Section 230 would only increase the dominance of Big Tech by reducing competition.

1. [Nabil '21](#) Only the largest tech companies—equipped with teams of lawyers and deep pockets—can afford to fight such a wave of litigation. Smaller firms may just remove more user-posted material or cease to host third-party content altogether to avoid court costs. This repeal will further entrench Big Tech's market dominance and protect them from future competition. Big Tech has access to substantially larger volumes of data that may make artificial intelligence-enabled content moderation more feasible.
2. **Section 230 allows for more competition in social media, which leads to a diversity of platforms and voices.** [Huddleston '20](#) Section 230 enables small platforms to focus on their product and the choices that best serve their users rather than investing in large legal teams. The result is that innovators can start new ventures on limited budgets. It allows innovators and platforms to pursue different options for what content they allow and to develop and compete in the market they feel they can best serve. Platforms may seek to serve specific audiences and moderate their content accordingly. Section 230 allows platforms to reach these audiences and tailor their choices to the specific needs. Section 230 was never intended to require all platforms to serve all content and audiences, but rather to allow platforms to find the solutions that best served their consumers' needs. The result is a diverse array of platforms that allow for more speech than ever before and a reduction in the barriers for individuals to express their opinions.
3. **Section 230 allows for startups to compete in the Big Tech industry which is the best way to combat the dominance of large media platforms.** [Ogunleye '22](#) Section 230 encourages successful innovation and entrepreneurship. Companies that rely on the protection of Section 230 were also found to have a lower shut down rate. Although critics have taken to arguing that the protections afforded by Section 230 have made the internet a worse place, it's been an under-appreciated contributor to a competitive online ecosystem. Section 230 has provided protection for small businesses and startups looking to challenge and compete with these large platforms. Those who are concerned about the size or power of the large social media platforms should view Section 230 as a key tool to encourage innovation and competition and be concerned with protecting it.

Analysis: Most literature on this topic points to the fact that Section 230 pretty unarguably helps protect and promote competition. Against this argument, it is best to claim that the only way to decrease the influence of companies like Facebook is to allow startups to

compete in the field. Repealing Section 230 would limit the feasibility of startups competing due to exorbitant legal costs.

Answer: Repealing Section 230 would only increase the dominance of Big Tech by reducing competition.

Nabil, Ryan. "Why Repealing Section 230 Will Hurt Startups and Medium-Sized Online Businesses", Competitive Enterprise Institute, 1 Feb 2021, <https://cei.org/blog/why-repealing-section-230-will-hurt-startups-and-medium-sized-online-businesses/>.

Only the largest tech companies—equipped with teams of lawyers and deep pockets—can afford to fight such a wave of litigation. Smaller firms may just remove more user-posted material or cease to host third-party content altogether to avoid court costs. By deterring small and medium-sized companies from hosting third-party content, this repeal will further entrench Big Tech's market dominance and protect them from future competition. Because of the financial resources available to large companies, they can hire teams of moderators and compliance professionals to guard against potential liabilities. That is even more likely because, compared to traditional companies of similar revenues, large tech companies like Facebook and Netflix employ substantially fewer workers—enabling them to hire additional staff. Compared to startups and medium-sized companies, Big Tech has access to substantially larger volumes of data that may make artificial intelligence-enabled content moderation more feasible.

Warrant: Section 230 allows for more competition in social media, which leads to a diversity of platforms and voices.

Huddleston, Jennifer. "Section 230 as a Pro-Competition Policy", American Action Forum, 27 Oct 2020, <https://www.americanactionforum.org/insight/section-230-as-a-pro-competition-policy/>.

Section 230 enables small platforms to focus on their product and the choices that best serve their users rather than investing in large legal teams. The result is that innovators can start new ventures on limited budgets in garages and college dorm rooms based on a good idea. It allows innovators and platforms to pursue different options for what content they allow and to develop and compete in the market they feel they can best serve. In other cases, a platform may gain popularity but still have limited staff. For example, Reddit only has approximately 350 employees but hosts a wide range of content with different standards set by each community. In some cases, platforms may seek to serve specific audiences and moderate their content accordingly. Section 230 allows platforms to reach these audiences and tailor their choices to the specific needs. Section 230 was never intended to require all platforms to serve all content and audiences, but rather to allow platforms to find the solutions that best served their consumers' needs. This differentiation has allowed, for example, differing political voices to be heard on a variety of websites, and has allowed social movements, such as #metoo, to leverage the power of platforms to gain attention for previously under-reported issues. The result is a diverse array of platforms that allow for more speech than ever before and a reduction in the barriers for individuals to express their opinions.

Warrant: Section 230 allows for startups to compete in the Big Tech industry which is the best way to combat the dominance of large media platforms.

Ogunleye, Ife. "Section 230: Good for Competition Online", Medium, 5 July 2022, <https://medium.com/chamber-of-progress/section-230-good-for-competition-online-185564c7f69c>.

In contrast, Section 230 encourages successful innovation and entrepreneurship. Companies that rely on the protection of Section 230 were also found to have a lower shut down rate than companies relying on the DMCA. Although critics have taken to arguing that the protections afforded by Section 230 have made the internet a worse place, it's been an under-appreciated contributor to a competitive online ecosystem. Politicians such as Senator Lindsay Graham have stated that 'Big Tech' are the only companies with absolute immunity from being sued for their actions thanks to the protection of Section 230. In fact, Section 230 has provided protection for small businesses and startups looking to challenge and compete with these large platforms. Those who are concerned about the size or power of the large social media platforms should view Section 230 as a key tool to encourage innovation and competition and be concerned with protecting it.

AT: Repealing Section 230 prevents censorship

Repealing Section 230 would increase censorship; FOSTA example proves.

1. [Moss 21'](#) Without Section 230, social media platforms would be more likely to censor user-posted content.[43] For example, after the Fight Online Sex Trafficking Act (FOSTA)[44] was enacted in 2018, many critics of the law claimed that, rather than preventing the exploitation of sex trafficked persons online as intended, the law led to increased censorship of online discussions regarding sex work and prevented law enforcement from locating victims and prosecuting traffickers. In short, by imposing liability on platforms for hosting certain content, the law, in effect, has led to widespread censorship online and other undesirable, unintended consequences.
2. **Impact:** Creating more liability for social media companies could lead to harmful political censorship. [Bambauer '20](#) Some internet firms, like Twitter, have responded to criticism by banning political advertising as a category. Some internet firms, like Twitter, have responded to criticism by banning political advertising as a category. There is no evidence that internet platforms systematically discriminate against conservatives - or progressives, for that matter. Forcing firms to filter information based on viewpoint is likely to be popular only with the political party currently in power.
3. **Impact:** Marginalized groups would be disproportionately harmed by censorship if Section 230 was repealed; what is considered "controversial" is constantly changing. [Kelley '20](#) Section 230 doesn't only allow sites that host speech, including controversial views, to exist. It allows them to exist without putting their thumbs on the scale by censoring controversial or potentially problematic content. And because what is considered controversial is often shifting, and context- and viewpoint-dependent, it's important that these views are able to be shared. "Defund the police" may be considered controversial speech today, but that doesn't mean it should be censored.

Analysis: The best claim against this argument is that repealing Section 230 would make censorship worse. Logically, if social media companies are more easily sued, they will try to censor any and all content that might cost them an expensive lawsuit. This leads to a litany of harms, including increased political censorship and silencing minority voices.

Repealing Section 230 would increase censorship; FOSTA example proves.

Moss, Rosie. "The Future of Section 230 | What Does It Mean For Consumers?", National Association of Attorneys General, 21 July 2023, <https://www.naag.org/attorney-general-journal/the-future-of-section-230-what-does-it-mean-for-consumers/#:~:text=While%20some%20legislators%20have%20called,content%20is%20unlawful%2C%20and%20dding>.

Moreover, many civil liberties groups, including the ACLU, have praised the Taamneh and Gonzalez rulings as a win for free speech. According to Patrick Toomey, deputy director of ACLU's National Security Project, "Today's decisions should be commended for recognizing that the rules we apply to the internet should foster free expression, not suppress it." Without Section 230, Toomey argues, social media platforms would be more likely to censor user-posted content.[43] For example, after the Fight Online Sex Trafficking Act (FOSTA)[44] was enacted in 2018, many critics of the law claimed that, rather than preventing the exploitation of sex trafficked persons online as intended, the law led to increased censorship of online discussions regarding sex work and prevented law enforcement from locating victims and prosecuting traffickers. In short, by imposing liability on platforms for hosting certain content, the law, in effect, has led to widespread censorship online and other undesirable, unintended consequences.

Impact: Creating more liability for social media companies could lead to harmful political censorship.

Bambauer, Derek E. "How Section 230 reform endangers internet free speech", Brookings Institute, 1 July 2020, <https://www.brookings.edu/articles/how-section-230-reform-endangers-internet-free-speech/>.

Some internet firms, like Twitter, have responded to criticism by banning political advertising as a category. Being freed from seeing political ads during campaign season may seem like a blessing. But such a ban inevitably hurts upstart and third-party candidates, who do not have the ability to command attention from standard media outlets in the way that established politicians with the backing of one of the two major American parties can. Some of the proposals put forth by Republicans, such as Hawley's and Trump's, are responding to phantom controversies. There is no evidence that internet platforms systematically discriminate against conservatives - or progressives, for that matter. Forcing firms to filter information based on viewpoint is likely to be popular only with the political party currently in power.

Impact: Marginalized groups would be disproportionately harmed by censorship if Section 230 was repealed; what is considered "controversial" is constantly changing.

Kelley, Jason. "Section 230 is Good, Actually", Electronic Frontier Foundation, 3 Dec 2020, <https://www.eff.org/deeplinks/2020/12/section-230-good-actually>.

And Section 230 doesn't only allow sites that host speech, including controversial views, to exist. It allows them to exist without putting their thumbs on the scale by censoring controversial or potentially problematic content. And because what is considered controversial is often shifting, and context- and viewpoint- dependent, it's important that these views are able to be shared. "Defund the police" may be considered controversial speech today, but that doesn't mean it should be censored. "Drain the Swamp," "Black Lives Matter," or even "All Lives Matter" may all be controversial views, but censoring them would not be beneficial. Online platforms' censorship has been shown to amplify existing imbalances in society—sometimes intentionally and sometimes not. The result has been that more often than not, platforms are more likely to censor disempowered individuals and communities' voices. Without Section 230, any online service that did continue to exist would more than likely opt for censoring more content—and that would inevitably harm marginalized groups more than others.

AT: Repealing Section 230 encourages transparency.

Repealing Section 230 is not necessary to increase transparency.

1. [Alben '21](#) In the coming year, Amazon, Google, Facebook and others will face increasing scrutiny for alleged anti-competitive business practices arising from their quasi-monopoly status in their spheres. Such scrutiny is healthy, because it will add transparency to their operations and provide consumers with more insight into their business models and use of the personal data that fuel many of their profitable operations. But attacking the 25-year-old liability shield for all internet platforms is not a viable way to increase accountability. We need to recognize that, despite their size and influence, private companies should have the autonomy to create rules that they believe best serve their users.
2. **Legal action to increase transparency can be taken without repealing Section 230.** [Kelley '20](#) What's needed to ensure that a variety of views have a place on social media isn't creating more legal exceptions to Section 230. Rather, companies should institute reasonable, transparent moderation policies. Platforms shouldn't over-rely on automated filtering and unintentionally silence legitimate speech and communities in the process. And platforms should add features to give users themselves—not platform owners or third parties—more control over what types of posts they see.
3. **Most transparency proposals advocate for reforming Section 230, not repealing it.** [Swisher '21](#) I'm intrigued by Nate Persily's proposal to require platforms to provide outside researchers with access to data. One of the biggest problems with the current debate is the lack of transparency among the large social media companies. The proposal would help to address this and inform the debate. I also like some elements of the PACT Act. The bill contains many reforms, including an exemption to Section 230 if a platform declines to remove content that has been found defamatory in a lawsuit between the subject and the poster.

Analysis: The best narrative against this argument is to explain that all of the pro's impacts can be achieved through simple reform of Section 230 rather than a total repeal. This avoids all of the negative consequences of repealing Section 230, while gaining the positive aspects of increasing transparency. Most likely, the pro's evidence will be suggesting reforms to improve transparency rather than completing getting rid of Section 230.

Answer: Repealing Section 230 is not necessary to increase transparency.

Alben, Alex. "Op-Ed: Trump's bizarre fixation on demolishing an internet speech rule", Los Angeles Times, 7 Jan 2021, <https://www.latimes.com/opinion/story/2021-01-07/section-230-internet-liability-repeal>.

In the coming year, Amazon, Google, Facebook and others will face increasing scrutiny for alleged anti-competitive business practices arising from their quasi-monopolystatus in their spheres. Such scrutiny is healthy, because it will add transparency to their operations and provide consumers with more insight into their business models and use of the personal data that fuel many of their profitable operations. But attacking the 25-year-old liability shield for all internet platforms is not a viable way to increase accountability. We need to recognize that, despite their size and influence, private companies should have the autonomy to create rules that they believe best serve their users.

Warrant: Legal action to increase transparency can be taken without repealing Section 230.

Kelley, Jason. "Section 230 is Good, Actually", Electronic Frontier Foundation, 3 Dec 2020, <https://www.eff.org/deeplinks/2020/12/section-230-good-actually>.

In sum: what's needed to ensure that a variety of views have a place on social media isn't creating more legal exceptions to Section 230. Rather, companies should institute reasonable, transparent moderation policies. Platforms shouldn't over-rely on automated filtering and unintentionally silence legitimate speech and communities in the process. And platforms should add features to give users themselves—not platform owners or third parties—more control over what types of posts they see.

Warrant: Most transparency proposals advocate for reforming Section 230, not repealing it.

Swisher, Kara. "We Need Less Talk and More Action From Congress on Tech", New York Times, 9 Dec 2021, <https://www.nytimes.com/2021/12/09/opinion/congress-facebook-teens.html>.

I'm intrigued by [Stanford Law professor] Nate Persily's proposal to require platforms to provide outside researchers with access to data. One of the biggest problems with the current debate is the lack of transparency among the large social media companies. The proposal would help to address this and inform the debate. But any such requirement would need to address the very real privacy concerns of providing access to such data. Relatedly, I'll give a plug for a nonpartisan, expert fact-finding commission that I've been proposing for the past few years. I also like some elements of the PACT Act. The bill contains many reforms, including an exemption to Section 230 if a platform declines to remove content that has been found defamatory in a lawsuit between the subject and the poster. Section 230's co-author, former congressman Chris Cox, does not think that Section 230 should cover such cases. I agree.

Blocks to Negative (AT NEG)

[AT: Section 230 built the modern internet.](#)

[AT: Section 230 allows for innovation.](#)

[AT: Section 230 creates free speech.](#)

[AT: Section 230 avoids crushing liability.](#)

[AT: Section 230 can be amended.](#)

[AT: Section 230 helps activists.](#)

[AT: Section 230 helps marginalized groups.](#)

[AT: Section 230 protects good ideas.](#)

[AT: Section 230 protects small businesses.](#)

[AT: Section 230 protects victims of sexual assault.](#)

[AT: Section 230 prevents court clog.](#)

[AT: Section 230 protects schools.](#)

[AT: Section 230 allows for content moderation.](#)

[AT: Repealing Section 230 would cause censorship.](#)

[AT: Piecemeal Approaches](#)

[AT: FOSTA/SESTA Helped](#)

[AT: Cloudflare/DNS](#)

[AT: 230 protects AI](#)

AT: Section 230 built the modern internet.

Section 230 reform would not destroy the modern internet.

1. **Section 230 repeal would be workable.** [Jeff 20'](#) screening of Internet communications is common around the world. It is completely possible to require private accountability for hate speech and inciting violence without curtailing the First Amendment. No constitutional rights are limitless—and the repeal of Section 230 has nothing to do with freedom of speech.
2. **Alternatives to Section 230 are possible.** [Dean 23'](#) Many people who get the idea of repealing Section 230 insist that it would not be possible for Internet platforms to comb through the hundreds of millions of user-generated comments that they post every day. We can require that platforms promptly remove material after being given notice by the person or entity claiming defamation. There is a model for this already.
3. **Alternatives to Section 230 are possible.** [Dean 23'](#) It is hard not to be disgusted by the idea that elected officials have to beg people like Elon Musk or Mark Zuckerberg to act responsibly in removing lies and disinformation from their platforms. At the end of the day, these are private platforms and the rich people who control them can do what they want.

Analysis: Use this evidence to show that Section 230 repeal is not as radical as opponents suggest and would probably be workable because similar regimes exist to govern publisher liability in other contexts.

Warrant: Section 230 repeal would be workable.

Bewkes, Jeff. "Now is not the time to repeal Section 230, but it should be soon." Fortune. 2020 <https://fortune.com/2020/12/30/section-230-repeal-trump-stimulus-checks/>
At the same time, more closely regulating social media companies is a good idea. But now—while Americans are desperately waiting for relief—is not the right time to haphazardly push through such changes. The regulation of technology is considered by many on the left and on the right to be a taboo, a bureaucratic assault on entrepreneurship, and a neo-Luddite undermining of U.S. competitiveness. However,

screening of Internet communications is common around the world. It is completely possible to require private accountability for hate speech and inciting violence without curtailing the First Amendment. No constitutional rights are limitless—and the repeal of Section 230 has nothing to do with freedom of speech.

Warrant: Repealing Section 230 would treat internet publishers like any other publishers

Bewkes, Jeff. "Now is not the time to repeal Section 230, but it should be soon." Fortune. 2020 <https://fortune.com/2020/12/30/section-230-repeal-trump-stimulus-checks/>

Unlike the ISPs of the 1990s, the social media platforms of the last 20 years are primarily electronic publishers—perfectly parallel to print publishers and broadcasters. There is no reason that these platforms should not be held to the same libel standards as print publishers, broadcasters, or cable channels. Why should Facebook, Google, Apple, Snap, Twitter, and others evade the same accountability of traditional print publishers now online, such as the Wall Street Journal, New York Times, Washington Post, Fortune, and Bloomberg? The Section 230 exemption needlessly protects social media publishers with the phrasing, "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."

Warrant: Alternatives to Section 230 are possible.

Baker, Dean. "Section 230: Can We Talk About It?." Center for Economic and Policy Research. Sept. 2023. <https://cepr.net/section-230-can-we-talk-about-it/>

Many of the people who get hysterical about the idea of repealing Section 230 insist that it would not be possible for Internet platforms to comb through the hundreds of millions of user-generated comments that they post every day. If the argument is that they have to avoid posting them in the first place, they might have a case, but we can restructure the law to accommodate web platforms, just as the law was reshaped to accommodate broadcast outlets. We can require that, in order to avoid potential liability for defamatory material, platforms promptly remove material after being given notice by the person or entity claiming defamation. There is a model for this already. The Digital Millennium Copyright Act (DMCA) requires that Internet hosts remove infringing material promptly after being given notice in order to avoid being sued for copyright infringement. The DMCA is problematic, there are many instances where material is removed wrongly by hosts who do not want to risk being sued. Nonetheless, the DMCA does provide a model that shows Internet platforms can in fact manage to cope with take-down requests, in spite of the vast amount of content they host.

Warrant: Alternatives to Section 230 are possible.

Baker, Dean. "Section 230: Can We Talk About It?." Center for Economic and Policy Research. Sept. 2023. <https://cepr.net/section-230-can-we-talk-about-it/>

It is hard not to be disgusted by the idea that elected officials have to beg people like Elon Musk or Mark Zuckerberg to act responsibly in removing lies and disinformation from their platforms. At the end of the day, these are private platforms and the rich people who control them can do what they want. This has always been the case with newspapers and television stations, many of which often pushed pernicious material to advance their political agenda or simply to make money. But, this mattered much less when it was one of many television stations or newspapers. It would be wrong to glorify a golden age of a vigorous freedom-loving media that never existed. But even the decisions of the largest newspaper or television network did not have as much weight as the decisions on content made by today's Internet giants. If we can restructure Section 230 in a way that leads to their downsizing and promotes a wide variety of competitors, it will be an enormous victory for democracy.

AT: Section 230 allows for innovation.

De-link: Section 230 stifles innovation.

1. **Section 230 creates harmful innovations.** [Michael '21](#) To what degree should Facebook be held accountable for the Capitol riots, much of the planning for which occurred on its platform? To what degree should Twitter be held accountable enabling terrorist recruiting? How much responsibility should Backpage and Pornhub bear for facilitating the sexual exploitation of children? What about other social-media platforms that have profited from the illicit sale of pharmaceuticals, assault weapons, and endangered wildlife?
2. **Section 230 creates bad incentives** [Michael '21](#) When you grant platforms complete legal immunity for the content that their users post, you also reduce their incentives to proactively remove content causing social harm.
3. **Section 230 helps bad actors.** [Danielle '18](#) numerous terrorist groups openly maintained an online presence on well-known social media services including Facebook and Twitter; several of those accounts were suspended after publication of the corresponding article. Yet because of Section 230's immunity provision, efforts to hold social media companies responsible failed.
4. **Section 230 hurts vulnerable people.** [Danielle '18](#) its overbroad interpretation has left victims of online abuse with no leverage against sites whose business model is abuse. This state of affairs can be changed without undermining free expression and innovation. Having broad protections for free speech and clear rules of the road is important for online platforms to operate with confidence. Section 230, at least as it is currently understood, is not necessary for either of these.

Analysis: Use this response to demonstrate how Section 230 is neither necessary nor sufficient for creating a positive experience on the internet. Show the judge that all the problems of the internet exist despite the protections of Section 230.

Warrant: Section 230 creates harmful innovations.

Smith, Michael. "It's Time to Update Section 230." *Harvard Law Review*, 9 Aug. 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>

Social-media platforms provide undeniable social benefits. They gave democratic voice to oppressed people during the Arab Spring and a platform for the #MeToo and #BlackLivesMatter movements. They helped raise \$115 million for ALS with the Ice Bucket Challenge, and they helped identify and coordinate rescue for victims of Hurricane Harvey. But we've also learned just how much social devastation these platforms can cause, and that has forced us to confront previously unimaginable questions about accountability. To what degree should Facebook be held accountable for the Capitol riots, much of the planning for which occurred on its platform? To what degree should Twitter be held accountable enabling terrorist recruiting? How much responsibility should Backpage and Pornhub bear for facilitating the sexual exploitation of children? What about other social-media platforms that have profited from the illicit sale of pharmaceuticals, assault weapons, and endangered wildlife? Section 230 just didn't anticipate such questions.

Warrant: Section 230 creates bad incentives

Smith, Michael. "It's Time to Update Section 230." *Harvard Law Review*, 9 Aug. 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>

At the time, this seemed a reasonable approach. But the problem is that these two subsections are actually in conflict. When you grant platforms complete legal immunity for the content that their users post, you also reduce their incentives to proactively remove content causing social harm. Back in 1996, that didn't seem to matter much: Even if social media platforms had minimal legal incentives to police their platform from harmful content, it seemed logical that they would do so out of economic self-interest, to protect their valuable brands. Let's just say we've learned a lot since 1996.

Warrant: Section 230 helps bad actors.

Citron, Danielle. "The Problem Isn't Just Backpage: Receiving Section 230 Immunity."

Georgetown University Technology Law Review, 2018,

https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1638&context=faculty_scholarship

Now consider the relationship between social media companies and terrorist groups. Last year, one of us (Wittes) undertook a survey of overseas groups that were formally designated as foreign terrorist groups yet still had active social media accounts. Federal law allows civil and criminal penalties for providing material support—including anything of value—to designated foreign terrorist groups. Yet numerous designated terrorist groups, including Hamas, Hezbollah, the PKK, and Lakshar-e-Taiba, openly maintained an online presence on well-known social media services, including Facebook and Twitter; several of those accounts were suspended after publication of the corresponding article.⁹ Yet because of Section 230's immunity provision, efforts to hold social media companies responsible under the civil provisions of the federal material support statute have consistently failed.

Warrant: Section 230 hurts vulnerable people.

Citron, Danielle. "The Problem Isn't Just Backpage: Revisiting Section 230 Immunity." Georgetown University Technology Law Review, 2018, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1638&context=faculty_scholarship
But its overbroad interpretation has left victims of online abuse with no leverage against sites whose business model is abuse. This state of affairs can be changed without undermining free expression and innovation. Having broad protections for free speech and clear rules of the road is important for online platforms to operate with confidence. Section 230, at least as it is currently understood, is not necessary for either of these. With modest adjustments to Section 230, either through judicial interpretation or legislation, we can have a robust culture of free speech online without shielding from liability platforms designed to host illegality or who deliberately host illegal content..

AT: Section 230 creates free speech.

Changing Section 230 doesn't jeopardize free speech - an unregulated Internet is worse. [Franks 21'](#) But the unregulated internet is exacerbating this problem. The current model shielding platforms from liability may ensure free speech for the privileged few; protecting free speech for all will require legal reform.

Turn: Section 230 suppresses speech.

1. **Section 230 allows for speech restrictions.** [Nate '21](#) Section 230 protects Internet platforms from being held liable for the content that individual users post on

their forum, But in doing so, it also allows those platforms to police and censor content so long as they take those actions within the nebulous confines of “good faith.”

- 2. Section 230 results in censorship** [Nate ‘21](#) Section 230 outsources censorship to monopolistic private actors, affording companies like Facebook and Twitter a sweetheart deal: It deputizes them to act as arbiters of the public square without any of the constitutional strings that attach to state entities under the First Amendment.
- 3. Representatives criticize Section 230 for allowing tech platforms to make biased decisions.** [Shrida ‘21](#) Generally, Republicans worry that Section 230 gives internet companies too much leeway to suppress what people say online. Democrats believe that it gives internet companies a pass for failing to effectively stop illegal drug sales or prevent extremists from organizing violence.
- 4. Legislation is being proposed to** [Shrida ‘21](#) The fight over the law reflects our fears that people can lie online seemingly without consequences. And it’s about a desire to hold people accountable when what happens online causes irreparable damage.

Analysis: This response demonstrates that Section 230 largely does the opposite of what it was intended to do - foster free speech on the Internet. Section 230 allows for and indeed incentivizes the types of restrictions that would be wholly impermissible in other settings.

Warrant: Changing Section 230 doesn't jeopardize free speech - an unregulated Internet is worse. Franks, 21 - Professor of Law and Dean's Distinguished Scholar, University of Miami School of Law [Mary Anne Franks, “Reforming Section 230 and Platform Liability,” Cyber Policy Recommendations for the New Administration, STANFORD CYBER POLICY CENTER, 1-27-2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4213840 accessed 11-22-2023; AD]

Some claim that any reform of Section 230 jeopardizes free speech in a larger sense, even if not strictly in the sense of violating the First Amendment. Of course, free speech is a cultural as well as a constitutional matter. It is shaped by non-legal as well as legal norms, and tech companies play an outsized role in establishing those norms. There is indeed good reason to be concerned about the influence of tech companies and other powerful private actors over the ability of individuals to express themselves. This is an observation scholars and advocates who work on online abuse issues have been making for years—that some of the most serious threats to free speech come not from the government, but from non-state actors. Marginalized groups in particular, including women and racial minorities, have long battled with private censorial forces as well as governmental ones. But the unregulated internet—or rather, the selectively regulated internet—is exacerbating, not ameliorating, this problem. The current model shielding platforms from liability may ensure free speech for the privileged few; protecting free speech for all will require legal reform.

Warrant: Section 230 allows for speech restrictions.

Hotchman, Nate. “Conservatives should support section 230 reform.” The National Review. Oct. 2021. <https://www.nationalreview.com/2021/10/conservatives-should-support-section-230-reform/> To be sure, some of the populist Right’s legislative schemes to take on social-media censorship – and almost all of the progressive Left’s proposals to combat “disinformation” – are short-sighted, even “asinine,” to use McCarthy’s description. And as Paul pointed out last week, overzealous government meddling in the affairs of private-business owners is often a risky constitutional proposition. But I would respectfully submit that these arguments are the wrong way to think about the relationship between public policy and Big Tech. Contrary to concerns voiced by conservatives like Paul and McCarthy, the most serious and sustainable solution to the issues plaguing Silicon Valley – reforming the liability shield afforded to powerful Internet platforms under Section 230 of the 1996 Communications Decency Act to require more free-speech protections for users – is not at all inconsistent with the principle of limited government. Section 230 protects Internet platforms from being held liable for the content that individual users post on their forum, holding 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.” But in so doing, it also allows those platforms to police and censor content with impunity – so long as they take those actions within the nebulous confines of “good faith.” Clause (c)(2) of the law reads:

Warrant: Section 230 results in censorship

Hotchman, Nate. “Conservatives should support section 230 reform.” The National Review. Oct. 2021. <https://www.nationalreview.com/2021/10/conservatives-should-support-section-230-reform/> Section 230 – a provision written in a year when webpages took an average of 30 seconds to load – effectively outsources censorship to monopolistic private actors, affording companies like Facebook and Twitter a sweetheart deal: It deputizes them to act as arbiters of the public square without any of the constitutional strings that attach to state entities under the First Amendment. As Columbia Law School professor Philip Hamburger argues in the Wall Street Journal, with Section 230, “Congress makes explicit that it is immunizing companies from liability for speech restrictions that would be unconstitutional if lawmakers themselves imposed them.” In its own words, Section 230 protects social-media companies from censoring content “whether or not such material is constitutionally protected.” But the Anglo-American legal tradition has long recognized that, as expressed in the summation of *Norwood v. Harrison* (1973), “it is axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.”

Warrant: Representatives criticize Section 230 for allowing tech platforms to make biased decisions

Ovide, Shira. “What’s Behind the Fight Over Section 230.” N.Y. Times March 25, 2021. <https://www.nytimes.com/2021/03/25/technology/section-230-explainer.html> The law created the conditions for Facebook, Yelp and Airbnb to give people a voice without being sued out of existence. But now Republicans and Democrats are asking whether the law gives tech companies either too much power or too little responsibility for what happens under their watch. Generally, Republicans worry that Section 230 gives internet companies too much leeway to suppress what people say online. Democrats believe that it gives internet companies a pass for failing to effectively stop illegal drug sales or prevent extremists from organizing violence. What the fight is about, really: Everything. Our anxieties are now projected on those 26 words.

Warrant: Legislation is being proposed to

Ovide, Shira. “What’s Behind the Fight Over Section 230.” N.Y. Times March 25, 2021. <https://www.nytimes.com/2021/03/25/technology/section-230-explainer.html>

Section 230 is a proxy fight for our discomfort with Facebook and Twitter having the power to silence the president of the United States or a high school student who has nowhere else to turn. The fight over the law reflects our fears that people can lie online seemingly without consequences. And it’s about a desire to hold people accountable when what happens online causes irreparable damage. It makes sense to ask whether Section 230 removes the incentives for online companies to put measures in place that would stop people from smearing those they don’t like or block the channels that facilitate drug sales. And likewise, it’s reasonable to ask if the real issue is that people want someone, anyone – a broken law or an unscrupulous internet company – to blame for the bad things that humans do to one another.

AT: Section 230 avoids crushing liability.

Turn → Liability is good

1. **Internet platforms should not be able to escape liability.** [Michael '21](#) we significantly underestimate the cost and scope of harm that posts on social-media can cause. We've also learned that platforms don't have strong enough incentives to protect their brands by policing their platforms.

2. **There is a broad consensus that liability is necessary.** [Michael '21](#) Today there is a growing consensus that we need to update Section 230. Facebook's Mark Zuckerberg even told Congress that it "may make sense for there to be liability for some of the content," and that Facebook "would benefit from clearer guidance from elected officials." Elected officials, on both sides of the aisle, seem to agree: As a candidate, Joe Biden told the New York Times that Section 230 should be "revoked, immediately," and Senator Lindsey Graham (R-SC) has said, "Section 230 as it exists today has got to give."
3. **Instagram creates social pressure** [Federica '22](#) particular social media environments such as Instagram may contribute to feelings of inadequacy as a result of upward social comparison. people have a drive to evaluate themselves by comparison with others when objective measures for self- evaluation are lacking.

Analysis: Use the Instagram example to show the judge that tech platforms need to be held liable for the objective harm that they cause to children. There is no valid excuse for avoiding liability in cases like this where the tech platform is the clear cause of suffering.

Warrant: Internet platforms should not be able to escape liability.

Smith, Michael. "It's Time to Update Section 230." Harvard Business Review, August 12, 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>

One thing we've learned is that we significantly underestimated the cost and scope of harm that posts on social-media can cause. We've also learned that platforms don't have strong enough incentives to protect their brands by policing their platforms. Indeed, we've discovered that providing socially harmful content can be economically valuable to platform owners while posing relatively little economic harm to their public image or brand name.

Warrant: There is a broad consensus that liability is necessary.

Smith, Michael. "It's Time to Update Section 230." Harvard Business Review, August 12, 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>

Today there is a growing consensus that we need to update Section 230. Facebook's Mark Zuckerberg even told Congress that it "may make sense for there to be liability for some of the content," and that Facebook "would benefit from clearer guidance from elected officials." Elected officials, on both sides of the aisle, seem to agree: As a candidate, Joe Biden told the New York Times that Section 230 should be "revoked, immediately," and Senator Lindsey Graham (R-SC) has said, "Section 230 as it exists today has got to give." In an interview with NPR, the former Congressman Christopher Cox (R-CA), a co-author of Section 230, has called for rewriting Section 230, because "the original purpose of this law was to help clean up the Internet, not to facilitate people doing bad things."

Warrant: Instagram should be liable for body image issues

Pedalino, Federica, and Anne-Linda Camerini. "Instagram Use and Body Dissatisfaction: The Mediating Role of Upward Social Comparison with Peers and Influencers among Young Females." International journal of environmental research and public health vol. 19,3 1543. 29 Jan. 2022, doi:10.3390/ijerph19031543

In an experimental study, Brown and Tiggemann [10] found that exposure to Instagram images that depict attractive and thin celebrities and peers was associated with higher body dissatisfaction levels, mediated by social comparison. Likewise, Kleemans et al. [31] found that manipulated Instagram pictures had a negative effect on female adolescents' body image, moderated by social comparison. The number of followers, the number of "likes", and comments on posted photos or videos provide additional quantitative and qualitative information about the appreciation by others and may thus contribute to the evaluation of the self in comparison with others.

Warrant: Instagram creates social pressure

Pedalino, Federica, and Anne-Linda Camerini. "Instagram Use and Body Dissatisfaction: The Mediating Role of Upward Social Comparison with Peers and Influencers among Young Females." International journal of environmental research and public health vol. 19,3 1543. 29 Jan. 2022, doi:10.3390/ijerph19031543

Past research suggested that particular social media environments such as Instagram may contribute to feelings of inadequacy as a result of upward social comparison processes [26,27]. From a social comparison theory perspective, people have a drive to evaluate themselves by comparison with others when objective measures for self- evaluation are lacking [28]. People can do so by engaging in upward and downward comparison. Upward comparison occurs when people compare themselves with someone who is better off [29]. The phrase "better off" may refer to different attributes, including physical appearance. The abundance of selected and manipulated photos, videos, and stories on Instagram provides users with multiple opportunities to engage in upward comparison with others.

AT: Section 230 can be amended.

Section 230 reform is politically infeasible and non-topical

1. **This debate should be whether or not section 230 should be repealed or not, not about reform.** As the resolution states, "The United States federal government should repeal Section 230 of the Communications Decency Act." Therefore, this debate should be whether or not repeal should happen, not about reform. You can't weigh any of their impacts here.
2. **Even if you buy that reform is topical, Congress is too polarized.** [Knight '14](#) Congressional Democrats and Republicans are further apart ideologically than at any

point during the past five decades. The growing polarization makes it even more difficult for Congress to find bipartisan compromise for legislation.

3. **There are few representatives willing to compromise.** [Knight '14](#) On average, Democrats are more liberal and Republicans are much more conservative than in the early 1970s. Moderates have disappeared, and there's far less ideological overlap between Republicans and Democrats. There are now only about two dozen moderate Democrats and Republicans left, compared to 160 in 1971.
4. **Polarization slows the legislative process.** [Deven '17](#) Divided party control of policymaking dramatically increases the time it takes to enact important legislation. These legislative delays are even greater when the two parties are ideologically polarized.
5. **Often, inability to pass legislation happens even though members agree on substance** [Deven '17](#) Even if a significant piece of legislation is passed into law, the excess time and debate required to pass that law can be problematic for lawmakers and society more generally. The Patient Protection and Affordable Care Act of 2010 (PPACA) is one such example. The original bill for this historic policy change was introduced on September 17, 2010, but the president did not sign the law until March 23, 2010—187 days later! Public approval of Congress dropped from 31 percent to 18 percent over this period. The end result of this process was a bill most experts regarded as imperfect.

Analysis: Use this response to pour cold water on an opponent who thinks that incremental reform will solve the problems of Section 230. Force your opponent to provide examples about when such incremental reform has been able to pass such a highly divided Congress.

Warrant: Congress is too polarized.

Knight, Stef. "Polarization in Congress hits half-century peak." *Axios*. Sept. 2014. <https://www.axios.com/2022/03/17/polarization-congress-democrats-republicans-house-senate-data> Congressional Democrats and Republicans are further apart ideologically than at any point during the past five decades — and Republicans are more to blame than Democrats, according to analysis by Pew Research Center. Why it matters: The growing polarization makes it even more difficult for Congress to find bipartisan compromise for important legislation. Both parties have had to deal with internal fracturing, but the GOP has moved further right than Democrats have moved left, the Pew analysis shows. Republicans have ended up with some untouchable partisans.

Warrant: There are few representatives willing to compromise.

Knight, Stef. "Polarization in Congress hits half-century peak." *Axios*. Sept. 2014. <https://www.axios.com/2022/03/17/polarization-congress-democrats-republicans-house-senate-data>

By the numbers: Pew Research highlighted three major congressional trends in recent decades. On average, Democrats are more liberal and Republicans are much more conservative than in the early 1970s. Moderates have disappeared, and there's far less ideological overlap between Republicans and Democrats. There are now only about two dozen moderate Democrats and Republicans left, compared to 160 in 1971-72. Congress is now far more demographically diverse. Go deeper: The geographic makeup of each party has shifted, as well. The share of House Republicans from the South has grown from less than 15% 50 years ago to 42% today — and these Southern Republicans have become even more conservative than the rest of the party.

Warrant: Polarization slows the legislative process.

Carlson, Deven. "How party polarization makes the legislative process even slower when government is divided." *LSE Blog*. April 2017.

<https://blogs.lse.ac.uk/usappblog/2015/05/19/how-party-polarization-makes-the-legislative-process-even-slower-when-government-is-divided/>

Divided party control of policymaking dramatically increases the time it takes to enact important legislation. These legislative delays are even greater when the two parties are ideologically polarized. In the U.S. federal government, the typical legislative environment consists of one party holding the presidency, the other party controlling one or both chambers of Congress, and a massive ideological gulf between the parties. Although this environment imposes significant legislative hurdles, many important bills are eventually passed into law. However, such bills often take a very long time to progress through the legislative process, which undermines the government's ability to quickly tackle important policy problems. In new research, we find that high levels of party polarization exacerbates the problems of divided government, slowing down the legislative process by a significant amount.

Warrant: Often, inability to pass legislation happens even though members agree on substance

Carlson, Deven. "How party polarization makes the legislative process even slower when government is divided." *LSE Blog*. April 2017.

<https://blogs.lse.ac.uk/usappblog/2015/05/19/how-party-polarization-makes-the-legislative-process-even-slower-when-government-is-divided/>

Understanding how political factors, like divided government and party polarization, influence the length of the policy process is important because long, drawn-out political battles draw the ire of the general public, fostering distrust of policymaking institutions. These legislative battles also limit the ability of Congress to address other policy problems, because lawmakers have only so much attention to devote to issues. Even if a significant piece of legislation is passed into law, the excess time and debate required to pass that law can be problematic for lawmakers and society more generally. The Patient Protection and Affordable Care Act of 2010 (PPACA) is one such example. The original bill for this historic policy change was introduced on September 17, 2010, but the president did not sign the law until March 23, 2010—187 days later! The congressional agenda was highly constrained during this time, because debate over the PPACA began long before a bill was introduced, forcing congressional lawmakers to focus most of their attention on a single issue. The vitriol around this bill and its sluggish progress did not escape the public eye, and, according to Gallup, public approval of Congress dropped from 31 percent to 18 percent over this period. The end result of this process was a bill most experts regarded as imperfect.

AT: Section 230 helps activists.

Turn → Section 230 hurts social justice

1. **Section 230 exposes vulnerable children to harm** [Bruce '20](#) Facebook and other platforms have saved countless billions thanks to this free pass. But kids and society are paying the price.
2. **Section 230 creates incentives to do harm** [Bruce '20](#) Because their business model depends on commanding as much consumer attention as possible, companies push content to kids to keep them on their platforms as long as possible. On today's internet, nobody cares if you're a kid.
3. **Section 230 can hurt racial equity** [Bertram '20](#) Section 230 is an important law for preserving the power for platforms to moderate content and promote safe and spaces for interacting online. Without it, platforms may face severe liability risk that may lead to a chilling effect on moderation that could lead to a cesspool of content including harmful disinformation and constitutionally protected hate speech. Unfortunately, Section 230 has also been used in court as a tool by platforms to avoid meaningfully confronting the role their products can play in furthering racial inequality; tech companies may hide behind this law to avoid discussing how their platforms affect civil rights issues, including housing, employment, and lending. In this moment of racial reckoning.

Analysis: Use this response to show how in practice, Section 230 empowers big tech companies. These companies are no friends to activists and push a variety of anti-social justice agendas.

Warrant: Section 230 exposes vulnerable children to harm

Reed, Bruce. "Why Section 230 hurts kids, and what to do about it", Protocol Magazine, Nov. 2020, <https://www.protocol.com/why-section-230-hurts-kids>
Facebook and other platforms have saved countless billions thanks to this free pass. But kids and society are paying the price. Silicon Valley has succeeded in turning the internet into an online Wild West – nasty, brutal, and lawless – where the innocent are most at risk. The smartphone and the internet are revolutionary inventions, but in the absence of rules and responsibilities, they threaten the greatest invention of the modern world: a protected childhood. Since the 19th century, economic and technological progress enabled societies to ban child labor and child trafficking, eliminate deadly and debilitating childhood diseases, guarantee universal education and better safeguard young children from exposure to violence and other damaging behaviors. Technology has tremendous potential to continue that progress. But through shrewd use of the irresponsibility cloak of Section 230, some in Big Tech have turned the social media revolution into a decidedly mixed blessing..

Warrant: Section 230 creates incentives to do harm

Reed, Bruce. "Why Section 230 hurts kids, and what to do about it", Protocol Magazine, Nov. 2020, <https://www.protocol.com/why-section-230-hurts-kids>
Although the U.S. has protected kids by establishing strict rules and standards everything from dirty air and unsafe foods to dangerous toys and violence on television, the internet has almost no rules at all, thanks to Section 230. Kids are exposed to a manner of unhealthy content online. Too often, they don't even have to seek it out; harm comes looking for them. Social media platforms run inappropriate ads alongside content that kids watch. Platforms popular with children are overrun with advertising- like programming, such as unboxing and surprise videos. Because their business model depends on commanding as much consumer attention as possible, companies push content to kids to keep them on their platforms as long as possible. All the tricks of manipulative design that make Big Tech dangerous for society – autoplay, badges and likes – put young people at the greatest risk. In the early days of the web, a New Yorker cartoon showed a dog at a desktop, with the caption, "On the internet, nobody knows you're a dog." On today's internet, nobody cares if you're a kid.

Warrant: Section 230 allows for algorithmic discrimination

Lee, Bertram. "Where the Rubber Meets the Road: Section 230 and Civil Rights." August 12, 2020, <https://publicknowledge.org/where-the-rubber-meets-the-road-section-230-and-civil-rights/>
A potential plaintiff may argue that if a hiring platform, like ZipRecruiter for example, treats the resumes of people who have enumerated protections under Title VII of the Civil Rights Act of 1964 differently for the purposes of ranking or advancing potential applicants, then the platform is liable for employment discrimination. The hiring platform would likely argue that the algorithm in question is editorial in nature and that the platform is acting within its discretion as a publisher of the employment advertisement in question. The hiring platform could argue that applicant resumes are third-party content and, as such, the hiring platform would have no liability under Section 230 as it is solely moderating content within its editorial discretion. Although this example focuses on employment, you could easily change this scenario to platforms that match housing and credit applicants to homes or financial institutions and still encounter the same Section 230 problem before the court could even reach the merits of a case.

Warrant: Section 230 can hurt racial equity

Lee, Bertram. "Where the Rubber Meets the Road: Section 230 and Civil Rights." August 12, 2020, <https://publicknowledge.org/where-the-rubber-meets-the-road-section-230-and-civil-rights/>
Section 230 is an important law for preserving the power for platforms to moderate content and promote safe and spaces for interacting online. Without it, platforms may face severe liability risk that may lead to a chilling effect on moderation that could lead to a cesspool of content including harmful disinformation and constitutionally protected hate speech. Unfortunately, Section 230 has also been used in court as a tool by platforms to avoid meaningfully confronting the role their products can play in furthering racial inequality; tech companies may hide behind this law to avoid discussing how their platforms affect civil rights issues, including housing, employment, and lending. In this moment of racial reckoning, the benefits of Section 230 must work in concert with platform accountability – not just for content moderation but also for civil rights. Advocates, consumers, and members of Congress want to know that these dominant digital platforms embrace equality and non-discrimination based on one's protected class status. The problem is that we don't know whether dominant platforms, or digital platforms in general, are compliant with civil rights law. These inquisitions, regulatory or legal, have been stymied by digital platforms claiming that Section 230 immunizes them from civil rights suits, as many platforms claim that the discriminatory conduct has been done by third parties and not the platforms themselves.

AT: Section 230 helps marginalized groups.

Turn → Section 230 hurts marginalized groups.

1. **Section 230 has created a toxic internet** [Neil '20](#) Section 230 has created the internet of today. An internet mired in toxicity, deliberate disinformation intended to harm, and harassment that eclipses the potential of the internet to enhance prosperity and well-being.
2. **Section 230 creates bad incentives for internet platforms** [Neil '20](#) [Section 230] fails to encourage platforms to develop better business models that would prevent harms from occurring in the first place. It is part of a legal framework that allows platforms to externalize costs that should be internalized, and which therefore encourages reckless conduct.
3. **A middle ground would be better for protecting marginalized speech** [Staff '99](#) recraft immunity in such a way that balances the burdens of plaintiffs against the burdens of platforms. This middle ground would be more desirable than letting current harms persist.
4. **Section 230 helps censor marginalized beliefs** [Staff '99](#) § 230 enables platforms to turn a blind eye to this sort of censorship in that it immunizes even platforms that refuse to moderate illegal acts facilitated on the platform. big tech is allowed to reap the benefits of these harms without thought of any sort of liability.

Analysis: Use this response to demonstrate how Section 230 creates incentives to reinforce privileged voices at the expense of the marginalized. Invite the judge to consider a possible future with a more open internet.

Warrant: Section 230 has created a toxic internet

Turkewitz, Neil. "How to Fix Section 230: Thoughts on Professor Citron's Recent Paper," Medium March 22, 2022, https://medium.com/@enturkewitz_56674/how-to-fix-section-230-thoughts-on-professor-citrons-recent-paper-52e60a8bae87#

As Professor Citron discusses at length, reasonableness is a central concept in law, well tested and flexible. Unlike specific regulatory frameworks whose effectiveness are likely to be challenged and perhaps undermined by developments in technology, reasonableness has the beauty of adaptability. Without a requirement for reasonable conduct, Section 230 has created the internet of today. An internet mired in toxicity, deliberate disinformation intended to harm, and harassment that, for so much of the population, eclipses the potential of the internet to enhance prosperity and well-being. We can and must do better. Platform accountability for the way they conduct their businesses is a central feature of improving the landscape.

Warrant: Section 230 creates bad incentives for internet platforms

Turkewitz, Neil. "How to Fix Section 230: Thoughts on Professor Citron's Recent Paper," Medium March 22, 2022, https://medium.com/@enturkewitz_56674/how-to-fix-section-230-thoughts-on-professor-citrons-recent-paper-52e60a8bae87#

This is absolutely right. Notice & takedown rewards willful indifference and fails to encourage platforms to develop better business models that would prevent harms from occurring in the first place. It is part and parcel of an exceptionalist legal framework that allows platforms to externalize costs that should be internalized, and which therefore encourages – or at least rewards, reckless conduct. In addition, the history of notice & takedown under the DMCA demonstrates its failure as a mechanism for addressing harm. In an exhaustive recent study by the Copyright Office delivered to Congress on the functioning of the notice & takedown provisions of Section 512, the Copyright Office warned that notice & takedown has failed, and is failing, to accomplish the goals set out by Congress, and was "unbalanced" in effect against the interests of creators.

Warrant: A middle ground would be better for protecting marginalized speech Staff. "Science Brings People Together", CERN, 20 Dec 1999,

<https://home.cern/news/press-release/cern/science-bringing-nations-together>

As Citron and Wittes' aptly named article proposes, I too believe that "the Internet will not break" from reforming § 230 to protect the victims of online abuse and harassment.[59] The benefits of § 230's immunity "could have been secured at a slightly lesser price." [60] The question of how to reform § 230 to address abuse against individual users and larger societal harms is admittedly difficult because of misinformation about the law and opaqueness concerning what role platforms have in developing or creating harmful content. However, that should not hinder efforts to recraft immunity in such a way that balances the burdens of plaintiffs against the burdens of platforms.[61] This middle ground would be more desirable than letting current harms persist because of the Internet's central role in facilitating communication and civic engagement and the need to protect marginalized speech.

Warrant: Section 230 helps censor marginalized beliefs Staff. "Science Brings People Together", CERN, 20 Dec 1999, <https://home.cern/news/press-release/cern/science-bringing-nations-together>

Harassers and abusers drive their victims offline by instilling legitimate fears of continued harassment, which leave victims effectively silenced.[68] And women and racial minorities are disproportionately the targets of some of the most egregious cyberattacks.[69] Thus, already marginalized speech is getting quashed by bad actors and impacting civic engagement on and off-line. § 230 enables platforms to turn a blind eye to this sort of censorship in that it immunizes even platforms that refuse to moderate illegal acts facilitated on the platform. Yet, at the same time, § 230 is somehow argued to protect against censorship—namely, the collateral censorship of predominantly privileged voices to begin with. What's more, big tech is allowed to reap the benefits of these harms and is a presumed innocent bystander without second thought of any sort of accomplice liability.

AT: Section 230 protects good ideas.

Turn → Section 230 spreads harmful ideas.

- 1. Section 230 gives platforms the ability to engage in harmful behavior**
Thomas '21 Section 230 enables websites to ignore problematic or incorrect content. Internet companies have not done enough to keep these offensive materials off of their sites.
- 2. Section 230 immunizes platforms from hosting and propagating harmful ideas**
Thomas '21 Another issue facing Section 230 reform is the fact that many influential cases have upheld immunity in a number of controversial areas. In *Force v. Facebook*, the Second Circuit ruled that Facebook was immune from civil liability for housing terrorism-related content created by users.
- 3. Harmful ideas have real world consequences.**
Elliot '23 The rise in individual actions speaks to a new danger the country faces: the rapid spread of violent ideologies on the Internet via social media platforms. In 2016, sites like Instagram and Facebook played key roles in radicalizing and mobilizing about 90 percent of lone terrorist actors. This marked a 40 percent increase from the prior decade, which saw social media involved in about 50 percent of attacks.
- 4. Section 230 allows extremism to flourish**
Elliot '23 Social media's involvement in the rise of political violence and misinformation begs the question of why neither Congress nor any other regulatory body has held these corporations accountable. Section 230 gives companies the ability to regulate content on their websites as they see fit and stipulates that they cannot be held responsible for the content of their users' posts. Social media companies like Facebook fine-tune their own algorithms that rank, recommend, and remove unwanted posts with minimal regulation, keeping their users entertained for a longer period of time and optimizing revenue in the process.

Analysis: Use this response to show how many of the biggest problems in modern politics can be traced to Section 230 and the modern internet. Weigh this against the nebulous speech benefits your opponent brings up.

Warrant: Section 230 gives platforms the ability to engage in harmful behavior

Bourneuf, Thomas. "Free Speech in the Era of False News: Section 230 Protections In the Modern Era." NYU Journal of Law and Business. 2021.

<https://www.nyuilb.org/single-post/free-speech-in-the-era-of-false-news-section-230-protections-in-the-modern-era>

Many politicians advocate for either repealing or updating Section 230, though their motivations greatly differ. Many Republicans have argued that websites should no longer enjoy these protections because these websites censor conservatives, violating the spirit of the law. Democrats, meanwhile, argue that Section 230 enables websites to ignore problematic or incorrect content. This latter argument has support from one of the Section 230's authors, Ron Wyden. According to Mr. Wyden, the law was originally written to provide "a sword and a shield" for internet companies. The shield would protect internet companies from liability while the sword would encourage these companies to keep out offensive materials. A recent example of this "sword" was Twitter's decision to suspend Donald Trump's private Twitter account in the wake of the 2021 storming of the United States Capitol. Despite this recent event, Mr. Wyden has argued that internet companies have not done enough to keep these offensive materials off of their sites.

Warrant: Section 230 immunizes platforms from hosting and propagating harmful ideas

Bourneuf, Thomas. "Free Speech in the Era of False News: Section 230 Protections In the Modern Era." NYU Journal of Law and Business. 2021.

<https://www.nyuilb.org/single-post/free-speech-in-the-era-of-false-news-section-230-protections-in-the-modern-era>

Another issue facing Section 230 reform is the fact that many influential cases have upheld immunity in a number of controversial areas. For example, in *Force v. Facebook*, the Second Circuit ruled that Facebook was immune from civil liability for housing terrorism-related content created by users. In *Ben Ezra, Weinstein & Co. v. America Online*, the Tenth Circuit ruled that AOL was immune from liability for a user's posting of incorrect stock information. These cases suggest that given the broad applicability of Section 230 and the near absolute protection it provides, judicially created reform is unlikely.

Warrant: Harmful ideas have real world consequences.

Sher, Elliot. "Amending Section 230 to Reform Social Media and Address Political Extremism." The Gate, April 11, 2023.

<http://uchicagagate.com/articles/2023/4/11/amending-section-230-reform-social-media-and-address-political-extremism/>

The rise in individual actions speaks to a new danger the country faces: the rapid spread of violent ideologies on the Internet via social media platforms. In 2016, sites like Instagram and Facebook played key roles in radicalizing and mobilizing about 90 percent of lone terrorist actors. This marked a 40 percent increase from the prior decade, which saw social media involved in about 50 percent of attacks. Users can spread conspiracy theories, militia tactics, and white supremacist ideas on YouTube channels, blogs, Facebook pages, and more. Minimal regulation from governing bodies and social media companies, alongside over 302 million social media users in the U.S. as of 2023, enables the spread of extremist ideologies, creating a new reality where millions of Americans can undertake, support, or excuse political violence.

Warrant: Section 230 allows extremism to flourish
Sher, Elliot, "Amending Section 230 to Reform Social Media and Address Political Extremism," The Gate, April 11, 2023,
<http://uchicagagate.com/articles/2023/4/11/amending-section-230-reform-social-media-and-address-political-extremism/>

Social media's involvement in the rise of political violence and misinformation begs the question of why neither Congress nor any other regulatory body has held these corporations accountable. In short, the answer lies in 26 words of the 1996 Communications Decency Act, which aimed to allow the Internet to develop free of government intervention. Section 230 of the Act gives companies the ability to regulate content on their websites as they see fit and stipulates that they cannot be held responsible for the content of their users' posts. Social media companies like Facebook fine-tune their own algorithms that rank, recommend, and remove unwanted posts with minimal regulation, keeping their users entertained for a longer period of time and optimizing revenue in the process. The placement of profit above societal well-being was evident prior to the 2020 elections when Mark Zuckerberg agreed to adjust Facebook's algorithm to limit the spread of fake news. However, by the end of November, the number of users declined, and the company reverted back to its prior algorithm. After the political environment in the capitol was in disarray around 2020, even if Congress or the DOJ wished to charge social media companies, they could not under existing law

AT: Section 230 protects small businesses.

Small businesses aren't at risk.

1. **Small businesses are booming.** [Rebekah '23](#) Despite a tough economy, a record number of small businesses have launched nationwide in the last two years. "In 2021,

we saw 5.4 million applications to start a small business and that was up 50% from two years earlier," Sussman said.

2. **Small business owners are optimistic.** [Chamber of Congress '21](#) More than three in four (77%) small business owners are optimistic about the future of their business. Despite ongoing labor shortages, 38% of small business owners plan to hire more workers next year, up from 28% last quarter. More than four in ten (42%) say they plan to increase investments in their business in the coming year—an increase of 13 percentage points from last quarter.

Analysis: This is a good response because it shows that small businesses are sitting in a good financial place. Even if new lawsuits come about, you can make the argument that the small businesses will survive them. This is not terminal defense, but it is mitigatory and can cast doubt on your opponent's impact scenario.

Small businesses won't face big lawsuits.

1. **Small businesses will be held to a lower standard.** [Smith 21'](#) The duty-of-care standard would address this concern, because what is considered "reasonable" protection for a billion-dollar corporation will naturally be very different from what is considered reasonable for a small startup.

Analysis: This is a good response because it allows you to admit that small businesses may face lawsuits, but they wouldn't be as big as the neg makes them out to be. Instead, they would be proportional and something that the small business could survive. Thus, this serves as a strong piece of mitigatory defense.

Small businesses will be protected by lawsuit insurance.

1. **If a small business is frightened by potential lawsuits, they can protect themselves.** [Tech insurance'](#) Cyber liability insurance pays for costs related to data breaches and other cyber incidents at your business or your client's. It covers legal costs and damages like: • Regulatory fines and penalties • Customer breach notifications • Finding and fixing the security flaw • Credit and fraud monitoring services • Crisis management and public relations • Cyber Extortion demands. The average cost of cyber liability insurance for small companies is \$145 per month.

Analysis: This is a good response because it shows that small businesses aren't just left out to dry. It offers a probable solution at an affordable cost. This is another piece of strong mitigatory defense.

Warrant: Small businesses are booming.

Castor, Rebekah. "Small businesses experiencing post-pandemic boom despite tough Economy. Fox Business, 16 Feb. 2023, <https://www.foxbusiness.com/economy-small-businesses-experiencing-post-pandemic-boom-despite-tough-economy>

Despite a tough economy, a record number of small businesses have launched nationwide in the last two years. From people who were laid off going out on their own, to others who had more time at home that allowed them to turn their side hustles into full-time jobs, the boom in small business shows the pandemic really provided people with the opportunity to try something new. In today's economy, more Americans are their own boss than ever before. "I think the pandemic gave us a lot of uncertainty," said entrepreneur Jonathan Floyd of Kenner, Louisiana. "People who had been working in jobs for 15, 20, 25 years were laid off and kind of left." At the start of the pandemic, Floyd decided to leave his corporate job and invest all his time into his passion project, a gift box company specializing in gifts from New Orleans. "I had a feeling some layoffs were coming at my job, so I had a conversation with my wife and said let's give it 4 to 6 months and see how it goes," Floyd said. "Because of the pandemic, people

couldn't visit New Orleans, so I started getting a whirlwind of continual orders." Today, Floyd's company, Box of Care Gift Company, is still thriving. Now, he's planning to expand. "For me, it was about growing something myself and then having something I could pass on to my kids, and I was never going to get that being a part of a larger organization," Floyd said. His story resonates with thousands of small business owners across the country. While major corporations and tech companies continue with massive layoffs, small businesses are keeping the economy going. Brett Sussman with American Express calls it an 'entrepreneurial boom.' "In 2021, we saw 5.4 million applications to start a small business and that was up 50% from two years earlier," Sussman said.

Warrant: Small business owners are optimistic.

"Small Business Index Reaches Pandemic-Era High as Small Business Optimism Overcomes Uncertainty." U.S. Chamber of Commerce, 14 Dec. 2021, <https://www.uschamber.com/small-business/small-business-index-reaches-pandemic-era-high-as-small-business-optimism-overcomes-uncertainty>.

Small business owners' optimism around hiring and investment plans led to a pandemic-era high score of 63 for the MetLife and U.S. Chamber of Commerce Small Business Index. More than three in four (77%) small business owners are optimistic about the future of their business, according to the poll taken October 13 - 27, 2021, and released today. Despite ongoing labor shortages, 38% of small business owners plan to hire more workers next year, up from 28% last quarter, and the highest mark for this measure since the Index launched in Q2 2017. More than four in ten (42%) say they plan to increase investments in their business in the coming year—an increase of 13 percentage points from last quarter. "Small business owners' optimism is plowing through economic uncertainty, but they now face new obstacles with rising inflation, labor shortages, and supply chain challenges," said Tom Sullivan, Vice President for Small Business Policy at the U.S. Chamber of Commerce. "Addressing these challenges will be key to sustaining Main Street's optimism and the nation's economic recovery." Additionally, 62% of small businesses say their business is in good health, up from 55% last quarter, while those who say their business is in very good health is 30% Now compared to 20-23% throughout 2021.

Warrant: Small businesses will be held to a lower standard.

Smith, Michael D. and Marshall Van Alstyne. "It's Time to Update Section 230." Harvard Business Review, 12 Aug. 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>.

The duty-of-care standard is a good one, and the courts are moving toward it by holding social media platforms responsible for how their sites are designed and implemented. Following any reasonable duty-of-care standard, Facebook should have known it needed to take stronger steps against user-generated content advocating the violent overthrow of the government. Likewise, Pornhub should have known that sexually explicit videos tagged as "14yo" had no place on its site. Not everybody believes in the need for reform. Some defenders of Section 230 argue that as currently written it enables innovation, because startups and other small businesses might not have sufficient resources to protect their sites with the same level of care that, say, Google can. But the duty-of-care standard would address this concern, because what is considered "reasonable" protection for a billion-dollar corporation will naturally be very different from what is considered reasonable for a small startup. Another critique of Section 230 reform is that it will stifle free speech. But that's simply not true: All of the duty-of-care proposals on the table today address content that is not protected by the First Amendment. There are no First Amendment protections for speech that induces harm (falsely yelling "fire" in a crowded theater), encourages illegal activity (advocating for the violent overthrow of the government), or that propagates certain types of obscenity (child sex-abuse material)."

Warrant: If a small business is frightened by potential lawsuits, they can protect themselves. "How business lawsuit insurance can protect you." TechInsurance,

<https://www.techinsurance.com/small-business-insurance/how-business-lawsuit-insurance-protects-you>.

Cyber liability insurance pays for costs related to data breaches and other cyber incidents at your business or your client's. It covers legal costs and damages like: • Regulatory fines and penalties • Customer breach notifications • Finding and fixing the security flaw • Credit and fraud monitoring services • Crisis management and public relations • Cyberextortion demands. There are two types of cyber liability insurance policies: first-party cyber liability insurance and third-party cyber liability insurance. Here is what each covers: • First-party cyber liability insurance covers the costs of a data breach or cyberattack against your systems or network. • Third-party cyber liability insurance pays for lawsuits related to a data breach or other cyber incident that affects a client. Any business that stores or manages sensitive information should consider cyber liability coverage. It's also recommended for businesses whose services put them at increased risk of being blamed for a client's data breach, such as: • Cybersecurity companies • SaaS companies • Database administrators • Software developers • Network design businesses. The average cost of cyber liability insurance for small companies is \$145 per month. But the cost can vary based on the volume of data and the type of data your business handles. A popular policy among tech businesses is called technology errors and omissions insurance, or tech E&O. This coverage bundles cyber liability insurance with professional liability coverage. Many technology or IT businesses choose to buy tech E&O because it's generally cheaper than buying each policy separately.

AT: Section 230 protects victims of sexual assault.

Section 230 facilitates the perpetration of harmful behavior, including sex crimes.

1. **Section 230 facilitates the perpetration of harmful behavior, including sex crimes.** [Bergman '23](#) Social media companies created environments that allow users to post harmful content. They monetize that content and target users, despite the ability to promote less harmful content, because the harmful content results in more views and increases their profitability.
2. **Section 230 is the single greatest enabler of online sexual exploitation today.** [Moric '23](#) As a result of misinterpretations of CDA 230, tech companies have knowingly facilitated and profited from sexual abuse and exploitation, with impunity for more than a decade.

Analysis: This is a good response because it provides an incentive for hosting this kind of content. Not only does it show that there is a problem, but it also shows that there is no reason for big businesses to solve it. You could add another card to make this a greedy corporation turn.

Despite the FOSTA-SESTA carveout, companies are given immunity.

1. **The courts ignore the carveout.** [Moric '23](#) Since the passage of FOSTA-SESTA, trends in the courts have not been encouraging. Reddit was sued by six minors and their parents, for ignoring requests to remove child sexual abuse material over an entire decade. The judge ruled in favor of Reddit due to CDA 230 “immunity” and the survivors received no justice.
2. **The carveout doesn't get used.** [Adi '21](#) It's been over three years since former President Donald Trump signed FOSTA-SESTA. It found that over three years, the Department of Justice filed just one case under its rules against promoting or recklessly disregarding sex trafficking which remains in court.

Analysis: This is a good response because it provides historical precedence of the courts granting companies immunity despite obvious issues with the content being posted on their platforms. It could be a really good turn, especially in any sort of debate being weighed under a structural violence framework.

Warrant: Social media sites allow users to monetize harmful content with no liability. Bergman, Matthew. “Section 230.” Social Media Victims Law Center, 4 Dec. 2023, <https://socialmediavictims.org/section-230/>. Despite widespread internet changes, Section 230 has remained largely unchanged. Social media companies such as Facebook and Snapchat created environments that allow users to post harmful content. They monetize that content and target users, despite the ability to promote less harmful content, because the harmful content results in more views and increases their profitability. Whistleblower Francis Haugen publicized internal Facebook documents that proved Facebook knew it was causing harm but chose to keep doing it to enhance its profitability. These platforms have taken advantage of Section 230's intent, profiting from harmful content with total perceived immunity. Misconstruing the law in this way has threatened a generation globally with harm, by promoting content that enables the following: • Terrorism and genocide • White supremacy, homophobia, and other forms of bigotry • The sale of deadly drugs to youth and children • Low self-esteem • Body-shaming and disordered eating • Self-harm and suicide • Grooming and sexual abuse. Section 230 was meant to provide a safe harbor for social media companies to police their platforms and reduce harmful content. However, positive content is less profitable than harmful content. Social media platforms have the means to protect users from harmful content, but doing so would adversely impact their massive profit margins. The results have been deadly and heartbreaking.

Warrant: Section 230 is the single greatest enabler of online sexual exploitation today. Moric, Lily. “CDA 230: The Greatest Enabler of Online Sexual Exploitation.” National Center on Sexual Exploitation, 15 Nov. 2023, <https://endsexualexploitation.org/articles/cda-230-the-single-greatest-enabler-of-online-sexual-exploitation/>. As a result of misinterpretations of CDA 230, tech companies have knowingly facilitated and profited from sexual abuse and exploitation, with impunity for more than a decade. We have been fighting for clarifications of Congressional intent around CDA 230, and had a victory when the U.S. Senate passed FOSTA-SESTA in 2018. This law clarified that there is no immunity for tech companies that knowingly or recklessly facilitate sex trafficking and/or promote the prostitution of others (pimping). However, since the passage of FOSTA-SESTA, trends in the courts have not been encouraging. Reddit was sued by six minors and their parents, for ignoring requests to remove child sexual abuse material over an entire decade. Astonishingly, in 2022, the judge ruled in favor of Reddit due to CDA 230 “immunity” and the survivors received no justice. Likewise, the NCOSE Law Center and co-counsel's Twitter case faces an uphill battle due to negative rulings founded on Section 230. Although the lawsuit has not yet concluded, and the NCOSE Law Center continues to fight for a favorable outcome, tech companies across the nation are already citing the 9th circuit's ruling in this case to justify violating federal laws against child pornography. Meanwhile, reports of child sexual abuse material are increasing at a staggering rate, jumping from just 600 thousand in 2008 to over 32 million in 2022. It's past time for something to change.

Warrant: The courts ignore the carveout. Moric, Lily. “CDA 230: The Greatest Enabler of Online Sexual Exploitation.” National Center on Sexual Exploitation, 15 Nov. 2023, <https://endsexualexploitation.org/articles/cda-230-the-single-greatest-enabler-of-online-sexual-exploitation/>. As a result of misinterpretations of CDA 230, tech companies have knowingly facilitated and profited from sexual abuse and exploitation, with impunity for more than a decade. We have been fighting for clarifications of Congressional intent around CDA 230, and had a victory when the U.S. Senate passed FOSTA-SESTA in 2018. This law clarified that there is no immunity for tech companies that knowingly or recklessly facilitate sex trafficking and/or promote the prostitution of others (pimping). However, since the passage of FOSTA-SESTA, trends in the courts have not been encouraging. Reddit was sued by six minors and their parents, for ignoring requests to remove child sexual abuse material over an entire decade. Astonishingly, in 2022, the judge ruled in favor of Reddit due to CDA 230 “immunity” and the survivors received no justice. Likewise, the NCOSE Law Center and co-counsel's Twitter case faces an uphill battle due to negative rulings founded on Section 230. Although the lawsuit has not yet concluded, and the NCOSE Law Center continues to fight for a favorable outcome, tech companies across the nation are already citing the 9th circuit's ruling in this case to justify violating federal laws against child pornography. Meanwhile, reports of child sexual abuse material are increasing at a staggering rate, jumping from just 600 thousand in 2008 to over 32 million in 2022. It's past time for something to change.

Warrant: The carveout doesn't get used. Robertson, Adi. “Internet sex trafficking law FOSTA-SESTA is almost never used, says government report.” The Verge, 24 June 2021, <https://www.theverge.com/2021/6/24/22546984/fosta-sesta-section-230-carveout-gao-report-prosecutions>. It's been over three years since former President Donald Trump signed FOSTA-SESTA, a major carveout to internet speech law Section 230. Proponents called the law — which adds penalties for hosting illegal sex work-related content — necessary to prevent online trafficking. But a new government report suggests it remains rarely used, even as legislators push for other, similar platform liability laws. Earlier this week, the US Government Accountability Office (GAO) released a legally mandated report on the first three years of FOSTA-SESTA. The oversight agency compiled data from court records and corroborated it with other organizations, including the nonprofit Human Trafficking Legal Center. It found that over three years, the Department of Justice filed just one case under its rules against promoting or recklessly disregarding sex trafficking: a June 2020 charge against the owner of cityxguide.com, which remains in court.

AT: Section 230 prevents court clog.

Answer: Court clog is a myth.

1. **The pandemic did not fuel court clog.** [Raymond '22](#) The report found those backlogs on a national level were offset by a comparable 29% decline in federal prosecutors charging new defendants during the first two years of the pandemic and

litigants filing 6% fewer civil cases during that period. "Courts were able to effectively clear their dockets despite pandemic-related delays."

Analysis: This is a good argument because it is logical. Courts never stopped - there was Zoom court, so because arrests went down, it makes sense that dockets were able to clear.

Resources are increasing.

1. **The number of lawyers is increasing.** [Weiss '23](#) The total number of active lawyers in the United States has increased 6.6% since 2012.
2. **The number of judges is increasing.** [US Bureau of Labor Statistics '23](#) Overall employment of judges and hearing officers is projected to grow 2 percent from 2022 to 2032, about as fast as the average for all occupations.
3. **The number of law students is increasing.** [Insight into Diversity '23](#) The number of students admitted into law schools rose in 2022, marking the first increase in seven years, according to a new report by the nonprofit AccessLex Institute.

Analysis: This is a good argument because it shows that the problem is solving itself on all levels in the status quo, and no action needs to be taken. Instead, you can advocate for fixing a problem that is not fixing itself.

If NEG Running Innovation/Patents:

Innovative patents are not handled by courts.

[Justia](#): Patent prosecution is the process of drafting, filing, and negotiating with the U.S. Patent and Trademark Office (USPTO) in order to obtain patent protection and rights for an invention. It is different from patent litigation, which involves legal proceedings to address patent infringement after a patent is already procured.

If NEG Running Criminal Trial Delays:

Criminal and civil courts are completely separate within the court system.

[CriminalDefenseLawyer '20](#): In some countries, civil and criminal issues may be decided by one court, but in the United States, civil and criminal courts are completely separate. Different rules apply and, at least in larger cities, the attorneys and judges are different too.

Warrant: The pandemic did not fuel court clog.

Raymond, Nate. "Pandemic-fueled federal court case backlog less than expected: study." Reuters, 2 Dec. 2022,

<https://www.reuters.com/legal/government/pandemic-fueled-federal-court-case-backlog-less-than-expected-study-2022-12-02/#:~:text=The%20Federal%20Judicial%20Center%2C%20the,public%20health%20concerns%20delayed%20trials>.

Expectations of a massive federal court case backlog brought on by courthouse closures and other COVID-19 pandemic-related disruptions did not come to fruition thanks to a decline in arrests and newly-filed lawsuits, according to a new study. The Federal Judicial Center, the federal judiciary's research arm, in a report released this week confirmed that the pandemic led to a nationwide slowdown in criminal and civil cases as public health concerns delayed trials. But, the report found those backlogs on a national level were offset by a comparable 29% decline in federal prosecutors charging new defendants during the first two years of the pandemic and litigants filing 6% fewer civil cases during that period. "Courts were able to effectively clear their dockets despite pandemic-related delays at least in part because fewer new criminal defendants and civil cases came on to their dockets during the pandemic," the report said. Researchers found that while about two-fifths of district courts emerged from the pandemic's second year with more pending cases than expected, on a national basis case backlogs had returned to pre-pandemic levels by March 2022. The study's authors noted their numbers for civil cases were ultimately just estimates as they excluded the thousands of lawsuits consolidated in multidistrict litigation proceedings due to a lack an established convention for counting them. MDLs comprised over 70% of the federal civil caseload in 2021.

Warrants: The number of lawyers is increasing.

Weiss, Debra Cassens. "Lawyer population is up 6.6% in 10 years; percentage of Black lawyers remains the same, new ABA survey says." ABA Journal, 13 June 2022. <https://www.abajournal.com/web/article/lawyer-population-is-up-6.6-in-10-years-percentage-of-black-lawyers-remains-the-same>.

The total number of active lawyers in the United States has increased 6.6% since 2012, according to the 2022 National Lawyer Population Survey released by the ABA on Friday. The number of active lawyers in the nation was 1,327,010 as of Dec. 31, 2021, according to the 2022 statistics. There were 1,245,205 active lawyers reported in the 2012 statistics. The last time that there was less than 1 million lawyers in the United States was 1998, when there were 985,921 lawyers. Thirty-eight percent of active lawyers in reporting states are women, an increase from 33% in 2012. Sixty-two percent of active lawyers in reporting states are men, a decrease from 67% in 2012. Eighty-one percent of active lawyers are white, a decrease from 88% in 2012. Five percent of active lawyers in reporting states are Black, the same percentage as in 2012. Five percent are Asian, an increase from 2% in 2012. Six percent are Hispanic, an increase from 3% in 2012.

Warrant: The number of judges is increasing.

"Judges and Hearing Officers." U.S. Bureau of Labor Statistics, 20 Sept. 2023.

<https://www.bls.gov/ooh/legal/judges-and-hearing-officers.htm#:~:text=Overall%20of%20judges%20and,the%20average%20for%20all%20occupations>.

Overall employment of judges and hearing officers is projected to grow 2 percent from 2022 to 2032, about as fast as the average for all occupations. About 1,700 openings for judges and hearing officers are projected each year, on average, over the decade. Many of those openings are expected to result from the need to replace workers who transfer to different occupations or exit the labor force, such as to retire.

Warrant: The number of law students is increasing.

"Law School Admissions on the Rise." Insight Into Diversity, 17 May 2023.

<https://www.insightintodiversity.com/law-school-admissions-on-the-rise/#:~:text=The%20number%20of%20students%20admitted,by%20the%20nonprofit%20AccessLex%20Institute>.

The number of students admitted into law schools rose in 2022, marking the first increase in seven years, according to a new report by the nonprofit AccessLex Institute. The report, titled "Legal Education Data Deck: Key trends on access, affordability and value," reveals the overall admission rate for law schools increased by two percentage points, with 70 percent of students offered admission. Although admission rates grew one percentage point for both men and women, the report indicates that men continue to be admitted at a higher rate than women. Underrepresented students were also less likely to receive offers compared to their White counterparts. White applicants had an admission rate of 78 percent, while Black and Hispanic/Latino applicants had rates of 48 percent and 58 percent, respectively. However, the data shows some progress for law schools in recruiting and retaining underrepresented individuals. Students of color accounted for 35 percent of enrollment and 34 percent of withdrawals in 2021-2022, whereas in 2020-2021, they made up 47 percent of attritions but only 33 percent of first-year enrollment. Data used in the report comes from the American Bar Association, Law School Admission Council, National Center for Education Statistics, and National Association for Law Placement.

Warrant: Innovative patents are not handled by courts.

"Patent Prosecution & Legal Concerns Over Patentability" Justia.

<https://www.justia.com/intellectual-property/patents/patent-prosecution/>

Patent prosecution is the process of drafting, filing, and negotiating with the U.S. Patent and Trademark Office (USPTO) in order to obtain patent protection and rights for an invention. It is different from patent litigation, which involves legal proceedings to address patent infringement after a patent is already procured. Patent prosecution is a cooperative interactive process in which the applicant and the applicant's representatives work with USPTO examiners to address various concerns regarding an invention's patentability.

Warrant: Criminal and civil courts are completely separate within the court system.

"What Is the Difference Between Civil and Criminal Court?" CriminalDefenseLawyer.

<https://www.criminaldefenselawyer.com/resources/criminal-defense/defendants-rights/criminal-court-vs-civil-court>

There are several important differences between civil and criminal court. In general, civil courts are designed to resolve differences when private individuals or businesses can no longer reach an agreement on their own. Criminal courts are designed to determine whether a person has violated a criminal law (a law against harming or endangering others or their property) and, if so, punish the offender. In some countries, civil and criminal issues may be decided by one court, but in the United States, civil and criminal courts are completely separate. Different rules apply and, at least in larger cities, the attorneys and judges are different too.

AT: Section 230 protects schools.

Protecting students outweighs protecting schools.

- 1. Protecting students outweighs protecting schools.** [Reed '20](#) That 26-word provision hurts our kids and is doing possibly irreparable damage to our democracy. Unless we change it, the internet will become an even more dangerous place for young people, while Facebook and other tech platforms will reap ever-greater profits from the blanket immunity that their industry enjoys. But kids and society are paying the price. [Section 230] threaten[s] the greatest invention of the modern world: a protected childhood.
- 2. Companies are not held liable for their algorithms.** [Moss '23](#) "Young children are not only able, but likely to encounter disturbing videos when they randomly browse the platform starting from benign videos." Because of Section 230's far-reaching protections, there is substantial uncertainty about whether YouTube and other social media platforms are subject to any liability when their algorithms lead children to such content.

Analysis: This is a good response because it takes the focus off of the school building and onto the population schools serve - the kids. If the kids aren't safe, then the 'protecting schools' argument is irrelevant.

Warrant: Section 230 hurts young people the most.
Reed, Bruce and James P. Steyer. "Why Section 230 hurts kids, and what to do about it." Protocol, 8 Dec. 2020, <https://www.protocol.com/why-section-230-hurts-kids>.
On the contrary, there's a federal law that actually protects social media companies from having to take responsibility for the horrors that they're hosting on their platforms. Since Section 230 of the 1996 Communications Decency Act was passed, it has been a get-out-of-jail-free card for companies like Facebook and executives like Zuckerberg. That 26-word provision hurts our kids and is doing possibly irreparable damage to our democracy. Unless we change it, the internet will become an even more dangerous place for young people, while Facebook and other tech platforms will reap ever-greater profits from the blanket immunity that their industry enjoys. It wasn't supposed to be this way. According to former California Rep. Chris Cox, who wrote Section 230 with Oregon's Sen. Ron Wyden, "The original purpose of this law was to help clean up the internet, not to facilitate people doing bad things on the internet." In the 1990s, after a New York court ruled that the online service provider Prodigy could be held liable in the same way as a newspaper publisher because it had established standards for allowable content, Cox and Wyden wrote Section 230 to protect "Good Samaritan" companies like Prodigy that tried to do the right thing by removing content that violated their guidelines. But through subsequent court rulings, the provision has turned into a bulletproof shield for social media platforms that do little or nothing to enforce established standards. As Jeff Koseff wrote in his book "The Twenty-Six Words That Created the Internet," the provision "would come to mean that, with few exceptions, websites and internet service providers are not liable for the comments, pictures, and videos that their users and subscribers post, no matter how vile or damaging." Facebook and other platforms have saved countless billions thanks to this free pass. But kids and society are paying the price. Silicon Valley has succeeded in turning the internet into an online Wild West – nasty, brutal, and lawless – where the innocent are most at risk. The smartphone and the internet are revolutionary inventions, but in the absence of rules and responsibilities, they threaten the greatest invention of the modern world: a protected childhood

Warrant: Companies are not held liable for their algorithms.

Moss, Rosie. "The Future of Section 230 | What Does It Mean For Consumers?" National Association of Attorneys General, 21 July 2023, <https://www.naag.org/attorney-general-journal/the-future-of-section-230-what-does-it-mean-for-consumers/>

A particular area of concern regarding recommendation algorithms is the exposure of children to harmful or dangerous content on websites such as YouTube and apps like TikTok. According to a research study funded by the European Union, "Young children are not only able, but likely to encounter disturbing videos when they randomly browse the platform starting from benign videos." [33] Because of Section 230's far-reaching protections, there is substantial uncertainty about whether YouTube and other social media platforms are subject to any liability when their algorithms lead children to such content. Parents and school districts have expressed concern that social media websites use algorithms that "exploit the psychology and neurophysiology of their users," a technique which is "particularly effective and harmful" to children. [34] According to research from the Pew Research Center, three out of five YouTube users reported that they have seen "videos that show people engaging in dangerous or troubling behavior." [35] This suggests that there is a high probability that YouTube algorithms will lead children to dangerous or disturbing content, and will then keep them engaged for as long as possible.

AT: Section 230 allows for content moderation.

The status quo is failing to reduce hate speech; content moderation on social media platforms is decreasing.

1. [Navaroli '23](#) Individuals and advocates should once again demand that advertisers apply pressure on social media companies to reinstate their hate speech policies in line with human rights standards. These decisions should not be dictated by the whims of CEOs like Musk or the ultra-partisan whims of governors in Florida and Texas, people should encourage their representatives to support a bipartisan proposal. Demanding that platforms take greater measures to monitor hate speech, and advocating for federal regulations on social media policies to promote long-lasting change before it's too late.

Anti-semitic content online is increasing; repealing Section 230 presents a solution to increased hate speech in the status quo.

1. [Bolton '22](#) The Network Contagion Research Institute, which monitors the spread of online hate, found a "prolific surge" in anti-Jewish content. The place where we could and should start would be Section 230. We should just repeal it.

Repealing Section 230 would encourage better content moderation.

1. [Funke '21](#) Facebook and Google have become vehicles for hate speech, because Section 230 left it up to the platforms themselves to decide how to moderate content. Most companies took a light touch to moderation of content that's not illegal, but still problematic. Without Section 230, tech companies would be forced to think about their legal liability in an entirely different way.

Analysis: The best argument against neg's claims is that the status quo is not working. Social media companies cannot be trusted to moderate content independently, and Section 230 is the problem because it prevents platforms from being held accountable. With the examples above showing hate speech is on the rise, it is easy to prove Section 230 is not working to improve content moderation.

Answer: The status quo is failing to reduce hate speech; content moderation on social media platforms is decreasing.

Navaroli, Anika Collier. "I Worked On Twitter's Rules on Hate Speech. Social Media Platforms Are Failing Us Right Now", Boston Globe, 18 Oct 2023, <https://www.bostonglobe.com/2023/10/18/opinion/i-worked-twitters-rules-hate-speech-social-media-platforms-are-failing-us-right-now/>.

Now, with a deadly hate crime already being committed in the U.S. and talk of a future genocide unfolding before our eyes in Gaza, it's time to stop the rollback of these hate speech protections. Individuals and advocates should once again demand that advertisers apply pressure on social media companies to reinstate their hate speech policies in line with human rights standards and immediately reinvest in the safety teams who moderate this content. These decisions, however, should not be dictated by the whims of CEOs like Musk or the ultra-partisan whims of governors in Florida and Texas, two states with cases currently before the Supreme Court about what is shown on social media platforms. Rather, people should encourage their representatives to support a bipartisan proposal from Senators Elizabeth Warren and Lindsey Graham that would take steps toward reining in the power of social media companies through an independent regulatory body. Social media is the most powerful medium of our day, but hate-filled ideas on platforms can spread in an instant - in a way that has already been dangerous, even fatal, to marginalized communities. It's time we stand up for the safety of these groups, demanding that platforms take greater measures to monitor hate speech, and advocating for federal regulations on social media policies to promote long-lasting change before it's too late.

Answer: Anti-semitic content online is increasing; repealing Section 230 presents a solution to increased hate speech in the status quo.

Bolton, Alexander. "Schumer open to reforming tech liability protections amid rising hate speech on Twitter", The Hill, 6 Dec 2022, <https://thehill.com/policy/technology/3764073-schumer-open-to-reforming-tech-liability-protections-amid-rising-hate-speech-on-twitter/>.

The Network Contagion Research Institute, which monitors the spread of online hate, found a "prolific surge" in anti-Jewish content, according to The Times of Israel. The institute reported that "terms associated with Jew" are being tweeted more than 5,000 time per hour and most of the comments are "overtly antisemitic." Some lawmakers think the findings may spur Democrats to work with Republicans to withdraw some legal liability protection from Twitter and other social media platforms that become forums for hate speech. "I think the place where we could start and should start would be Section 230. We should just repeal it," said Sen. Josh Hawley (R-Mo.), who questioned whether that idea would get much Democratic support.

Answer: Repealing Section 230 would encourage better content moderation.

Funke, Daniel. "What you need to know about Section 230, the 'most important law protecting internet speech'", Poynter, 3 Mar 2021, <https://www.poynter.org/fact-checking/2021/what-you-need-to-know-about-section-230-the-most-important-law-protecting-internet-speech/>.

Wyden and Cox were right — today, American tech platforms like Facebook and Google have billions of users and are among the wealthiest companies in the world. But they've also become vehicles for disinformation and hate speech, in part because Section 230 left it up to the platforms themselves to decide how to moderate content. Until relatively recently, most companies took a light touch to moderation of content that's not illegal, but still problematic. (PolitiFact, for example, participates in programs run by Facebook and TikTok to fight misinformation.) "You don't have to devote any resources to make your products and services safe or less harmful — you can solely go towards profit-making," said Franks, the law professor. "Section 230 has gone way past the idea of gentle nudges toward moderation, towards essentially it doesn't matter if you moderate or not." Without Section 230, tech companies would be forced to think about their legal liability in an entirely different way. "Without Section 230, companies could be sued for their users' blog posts, social media ramblings of homemade online videos," Kosseff wrote. "The mere prospect of such lawsuits would force websites and online service providers to reduce or entirely prohibit user-generated content."

AT: Repealing Section 230 would cause censorship.

Social media companies themselves cannot be trusted to self-regulate and engage in content moderation.

1. [Susskind '22](#) they have potent powers of enforcement: to stifle a voice or an idea with a single click, to make an idea disappear or to go viral. The issue is they increasingly have the power to influence democratic discourse without appropriate checks and balances. They might make mistakes. They might make decisions that offend the basic norms of a free society. They might inadvertently design systems that harm the democratic process. those who assume the power to control the speech environment ought to be subject to a degree of oversight.

Current regulations do not push social media companies enough to prohibit problematic speech online, and the rules are easily broken.

1. [Spiggle '21](#) Despite the law giving social media companies and employers wide latitude in restricting the speech of their employees and users, it doesn't always mean they will want to do so. The reality is that when someone says something online that a

social media company or employer doesn't like, figuring out what the law says is the easy part. The hard part is deciding what to actually do about it.

Current moderation practices by social media companies are not enough.

1. [Magley '22](#) Social media companies' shortcomings underscore the urgent need for government infrastructure that regulates content moderation practices. Widespread democratic support for government regulation materialized in the wake of the pandemic and has continued to grow.

Analysis: The best way to outweigh neg's claims is to outweigh. Some content moderation is necessary in order to reduce hate speech and hold companies accountable. Ultimately, this makes the Internet a safe and more inclusive space.

Answer: Social media companies themselves cannot be trusted to self-regulate and engage in content moderation. Susskind, Jamie. "We Can Regulate Social Media Without Censorship. Here's How", Time, 22 July 2022, <https://time.com/6199565/regulate-social-media-platform-reduce-risks/>. The basic case for legislative intervention is, in fact, non-partisan. It's simply that, as more and more of our discourse migrates online, social media platforms are increasingly trusted to draw the borders of free expression. They order, filter and present the world's information. They set rules about what may be said and who may say it. They approve, and ban, speakers and ideas. And when they do these things, they necessarily apply their own rules, principles, biases, and philosophies. That's not a criticism—sometimes the right will be aggrieved, sometimes the left—but it does mean that the choice is not between regulating speech and leaving it alone. Speech is already being regulated by platforms. And they have potent powers of enforcement: to stifle a voice or an idea with a single click, to make an idea disappear or to go viral. The case for regulation does not depend on the (usually simplistic) claim that particular platforms are actually biased one way or another. The issue is rather that they increasingly have the power to influence democratic discourse without appropriate checks and balances. They might make mistakes. They might make decisions that offend the basic norms of a free society. They might inadvertently design systems that harm the democratic process. Just like others in positions of social responsibility—lawyers, doctors, bankers, pilots—those who assume the power to control the speech environment ought to be subject to a degree of oversight. Why are there higher qualifications and standards for a person who runs a pharmacy than for a person who runs a major social platform?

Answer: Current regulations do not push social media companies enough to prohibit problematic speech online, and the rules are easily broken. Spiggle, Tom. "Why Social Media Companies Can Censor Trump, And Why Your Boss Can Censor You", Forbes, 12 Jan 2021, <https://www.forbes.com/sites/tomspiggle/2021/01/12/why-social-media-companies-can-censor-trump-and-why-your-boss-can-censor-you/?sh=e4a29f57b797>. Despite the law giving social media companies and employers wide latitude in restricting the speech of their employees and users, it doesn't always mean they will want to do so. In President Trump's case, Twitter and Facebook saw fit to allow him to continue using their platforms even if he violated their terms of service. It was only after a literal assault on the United States Capitol that resulted in multiple deaths that they finally took action. Discussion surrounding this topic is not new, and continues to arise in various circumstances. About a year ago, the Washington Post caught some flak when it took action against one of its reporters for a Tweet she made following Kobe Bryant's death. The reality is that when someone says something online that a social media company or employer doesn't like, figuring out what the law says is the easy part. The hard part is deciding what to actually do about it.

Answer: Current moderation practices by social media companies are not enough. Magley, Zoe. "We Need to Regulate Social Media Content Moderation, But We Can't Just Eliminate Section 230(c).", Brown Political Review, 14 Mar 2022, <https://brownpoliticalreview.org/2022/03/social-media-and-section230c/>. Social media companies' shortcomings underscore the urgent need for government infrastructure that regulates content moderation practices. Furthermore, widespread democratic support for government regulation materialized in the wake of the pandemic and has continued to grow. Yet particularly in the United States, where objectionable speech is legally protected, government regulation of content moderation practices confronts an almost irresolvable tension that legislation across the globe has failed to effectively reconcile without controversy. How does one define and codify the parameters of "removable" or "impermissible" speech without encroaching upon freedom of expression? Furthermore, who (or what entity) should be tasked with determining whether a specific piece of content falls within such boundaries.

AT: Piecemeal Approaches

Piecemeal approaches fail - underinclusive and require regular updating. [Franks '21](#)
Section 230's problems are structural, and its flaws cannot be cured through a piecemeal approach. The exceptions approach is inevitably underinclusive, establishing an arbitrary hierarchy of harms that creates troubling normative and fairness implications. Such an approach also requires Section 230's exceptions to be regularly updated, an impractical option given the glacial pace of congressional efforts and partisan deadlock.

Warrant: Piecemeal approaches fail - underinclusive and require regular updating. Franks, Mary Anne. "Reforming Section 230 And Platform Liability", Stanford Cyber Policy Center, 27 January 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4213840. Some reformers maintain that the best way to reform Section 230 is to create explicit exceptions from its legal shield for certain types of particularly egregious behavior. This was the approach taken in the controversial 2016 Stop Enabling Sex Traffickers Act (SESTA), which amended Section 230 by rendering websites liable for knowingly hosting sex trafficking content. But Section 230's problems are structural, and its flaws cannot be cured through a piecemeal approach. The exceptions approach is inevitably underinclusive, establishing an arbitrary hierarchy of harms that creates troubling normative and fairness implications. Such an approach also requires Section 230's exceptions to be regularly updated, an impractical option given the glacial pace of congressional efforts and partisan deadlock.

AT: FOSTA/SESTA Helped

Chamberlain '19

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5598&context=flr>

“law enforcement professionals have complained that their investigations into sex trafficking cases have been “blinded”—they no longer have advertisements to subpoena, digital records to produce for prosecutors, and leads that can bring them to live crime scenes full of evidence, like hotel rooms. This blindness is not for lack of anything to see: one report suggests that online sex trafficking is as prevalent as ever.” (page 6)

“For law enforcement, there is a documented ease to tracking and locating traffickers online. Online advertisements with photographs or other identifying information may further assist the police in identifying and aiding specific victims. These advertisements may constitute crucial digital evidence in eventual legal proceedings against perpetrators, as both law enforcement officials and sex-trafficking survivors have noted.” (page 32/33)

Section 230 makes predators move offline, making it harder to find and arrest them, and also reducing evidence.

Kraut '23

<https://childsafety.losangelescriminallawyer.pro/children-and-grooming-online-predators.html#:~:text=There%20are%20an%20estimated%20500%2C000.by%20adults%20they%20meet%20online.>

"There are an estimated 500,000 online predators active each day. Children between the ages of 12 and 15 are especially susceptible to be groomed or manipulated by adults they meet online" And while using social media, forty percent of children remove privacy settings in order to attract more friends or followers" There are actively predators online, children need protection.

AT: Cloudflare/DNS

The NEG has no clear EV to explain why Cloudflare would be liable.

1. Their [Crenshaw '21](#) or [Adams '23](#) EV just states that Cloudflare or security services would be legally responsible for customer data flowing across their network, and that they are currently protected under 230, but the EV never explains why this would be legally accurate.

Cloudflare has its own protections from liability with or without Section 230 or Article 19.17 of the USMCA.

2. [Cloudflare '23](#), it's own terms of service for enterprise subscribers, clearly states in Section 10.3, that the "Customer will defend Cloudflare --- and indemnify them against Damages --- that are based upon: (a) Customer's use of the Service in a manner not permitted by the Agreement ---; and (b) Customer Data or Customer's Internet Properties---."

AT: 230 protects AI

AI is not protected by 230 in the status quo.

1. Drozd '23 explains that **"Section 230 has insulated Big Tech over the past 30 years. But whether Language Learning Model-related defamation suits are successful won't hinge on whether Section 230 applies. A gap in existing law necessitates that AI-specific regulation be adopted that affords victims relief when LLMs make false statements. Time will tell whether lawmakers pass legislation that follows in Section 230's footsteps and similarly affords LLMs immunity, [and] courts will be forced to either shoehorn existing legal standards or devise new legal standards that recognize the unique nature of artificial intelligence. Either way the days appear numbered of technology providers using Section 230 to quickly dispose of civil claims pre-discovery as part of a motion to dismiss. Big Tech won't be able to hide behind Section 230."**

Warrant: AI is not protected by 230 in the status quo.

Drozd, Kurt. "Section 230 Immunity Isn't a Guarantee in a ChatGPT World." Bloomberg Law, 6 June 2023, [news.bloomberglaw.com/us-law-week/section-230-immunity-isnt-a-guarantee-in-a-chatgpt-world](https://www.bloomberglaw.com/us-law-week/section-230-immunity-isnt-a-guarantee-in-a-chatgpt-world) Accessed 14 Jan. 2024.

Section 230 has insulated the courts and Big Tech from addressing these and similar questions over the past 30 years. But whether LLM-related defamation suits are successful won't hinge on whether Section 230 applies. Its time will soon pass as LLMs and other AI technologies replace first-generation, recommender algorithm technologies. Be that as it may, there remain fundamental questions whether AI platforms generating original content based on probabilistic, non-determinative processes can trigger liability under traditional defamation or product liability theories. A gap in existing law necessitates that AI-specific regulation be adopted that affords victims relief when LLMs make false statements. Time will tell whether lawmakers pass legislation that follows in Section 230's footsteps and similarly affords LLMs immunity, or, alternatively, legislation that sets forth legal standards for these models. In the absence of legislation, courts will be forced to either shoehorn existing legal standards to fit ChatGPT and other LLMs, or devise new legal standards that recognize the unique nature of artificial intelligence. Either way, with the arrival of LLMs, the days appear numbered of technology providers using Section 230 to quickly dispose of civil claims pre-discovery as part of a motion to dismiss. Big Tech won't be able to hide behind Section 230 as courts grapple with these questions.

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First Cross Setup

1. So when Section 230 is repealed, do you have an alternative legal explanation other than the one we provide for what would happen regarding liability?
2. If Yes: What other laws would be in place?
3. If No: Ok, then we have to proceed with the presumption that 19.17 will be the sole law of the land.

Overview Extension

Extend our overview. In addition to each of their unwarranted, non-evidence based claims they've made up to try and get you as a judge to vote against legal reality, they offer no alternative framework of laws that would be in place after a 230 repeal to explain the basis for and scope of liability. To go into court there must be a legal basis for a lawsuit, and there must be standing for a party to sue or be sued - they don't establish that there would be a private right of action that would create the lawsuits they say will change the internet. If they can't tell you what the law is, how can they claim lawsuits would be filed? They had the opportunity to provide you with that legal regime in their case (if they were second speakers) or in the first rebuttal (if they were first speakers). They didn't do that and it is unfair to let

them offer some completely new framework that we can't address until the summary. Thus the only framework with actual evidence supporting it, is ours and that's how the arguments must be evaluated. Accordingly, we delink their [contentions] as we explain that the only way litigation increases is if people sue, and if the law doesn't fundamentally change, no one has any reason to sue, so our overview can be cross-applied.

AFF General Clarification

Judge, allow me to explain what the USMCA and its Article 19.17 are. As my partner read in case, the USMCA was enacted by Congress in 2019 and contained sections with standards regarding a broad range of issues, including Article 19.17, which essentially maintains the same liability protections for internet communication services. However, we explain in case that there are two distinct differences between the status quo of Section 230 and 19.17, those differences being an absence of FOSTA and the ability to effectively provide injunctive relief.

Their entire position fails at the point their evidence relies on the false presumption that a Section 230 repeal would result in a legal landscape without liabilities protections for tech companies. They have fallen for political rhetoric around 230 with their evidence rather than legal facts. Article 19.17 of the USMCA will continue to provide 100% of the same liability protections to ICSs, which means that companies big and small will still be able to quickly dismiss lawsuits related to moderation and user generated content

The primary change to the courts system will be a requirement that most companies follow judicial orders on injunctions to remove harmful material after a trial separately finds a user liable for harmful content. With no financial stakes for the company or a plaintiff, there remains no incentive for a litigation to become a burdensome process.

NEG General Clarification

Judge, allow me to explain what the USMCA and its Article 19.17 are. As my partner read in case, the USMCA was enacted by Congress in 2019 and contained sections with standards regarding a broad range of issues, including Article 19.17, which essentially maintains the same liability protections for internet communication services.

Their entire position fails at the point their evidence relies on the false presumption that a Section 230 repeal would result in a legal landscape without liabilities protections for tech companies. They have fallen for political rhetoric around 230 with their evidence rather than legal facts. Article 19.17 of the USMCA will continue to provide 100% of the same liability protections to ICSs, which means that companies big and small will still be able to quickly dismiss lawsuits related to moderation and user generated content, meaning no fundamental reform actually can occur.

AT: Why hasn't USMCA been used in court cases before?

It has. Courts apply the USMCA (Just like they applied NAFTA) as controlling US Law:

1. **IN RE THE MARRIAGE OF MARIA DEL CARMEN RENDON QUIJADA, Appellant, and JULIAN JAVIER PIMIENTA DOMINGUEZ, Appellee.** [No. 2 CA-CV 2022-0174-FC](#). Court of Appeals of Arizona, Division Two.
NAFTA/USMCA's creation of a special VISA status prevents Arizona from denying a marriage license to a couple here under the USMCA's VISA status
2. **BIOPARQUES DE OCCIDENTE, S.A. DE C.V., v. UNITED STATES**, 633 F.Supp.3d 1340 (2023) [Slip Op. 23-67](#). [Consol. Court No. 19-00204](#). United States Court of International Trade. *The court, though the USMCA Implementation Act Section 19 U.S.C. § 1516a(f)(9), applied the definitions in the act to determine whether the court had jurisdiction to hear a case.*

AT: USMCA/19.17 is only International Law, not Federal/Domestic Law

3. [On January 29, 2020, the President signed into law](#) the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into full force.
4. On June 1, 2020, the USTR released the "Uniform Regulations", [104] which help interpret the different chapters of the USMCA, primarily chapters 4-7, paving the way for the Agreement to [take effect domestically](#)
5. Like NAFTA, the USMCA is essentially a set of standards that are agreed upon by this international group, but then each member is required to put those standards into effect in their own federal governments, making it domestic law.

AT: USMCA/19.17 is not legally binding, is only a trade agreement

1. USMCA's obligations become legally binding [after the Agreement enters into force](#). [This bill was already passed](#). The United States-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020.
2. [If they use [NetChoice '20](#)]: Turn their NetChoice EV as it literally states that "Nothing in the USMCA would preclude Congress from amending [or changing] Section 230", in this case repealing it, and they read that "Unlike a treaty, the USMCA is only an agreement. This means that neither the US nor Mexico nor Canada are strictly bound to the text." But what they are leaving out which is crucial context is the *very next* sentence which says that "In essence, if the US decides to exceed the text of the USMCA, it can." Repealing and letting 19.17 become the standard law is exactly what this is talking about. Congress can also make other amendments to liability protections if they want, they'd just be at risk of violating the USMCA if there is something drastically different from the 19.17 language.

3. Other international agreements are clearly implemented as U.S. laws. The Digital Millennium Copyright Act is just an implementation act for the WIPO Intellectual Property treaties. This act created a carve out from the liability protections of Section 230 when users post copyrighted material on the internet. This international agreement became US law when we passed the implementation act. The Law's Title 1 is literally named "WIPO Copyright and Performances and Phonograms Treaties Implementation Act" https://en.wikipedia.org/wiki/Digital_Millennium_Copyright_Act <https://www.govinfo.gov/content/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf> (p.2)

AT: Section 19.17 is not the same as Section 230, and has no mention of 230

Although Section 19.17 itself doesn't refer to Section 230 of the CDA by name, they have nearly identical wording and therefore effects on liability and protections, as explained in case.

1. [Krishnamurthy '20](#) Article 19.17 of the new USMCA contains provisions modeled on Section 230 of the U.S. Communications Decency Act that protect platforms like Facebook and Google from being held liable for harmful or unlawful content posted by their users.
2. Injunctions will finally matter and there will be a better way to fix the bad content. [Krishnamurthy '20](#) While the liability shield the USMCA provides is quite similar to CDA § 230, the provisions differ in that the USMCA permits courts to order injunctions requiring platforms to take down content.

AT: Section 19.17 would not replace Section 230

19.17 is already a law along with Section 230, but Section 230 currently prereqs it in the United States. This is because Section 230 is "exceeding" the text of 19.17, which the USMCA permits, and as soon as we stop exceeding 19.17, 19.17 in its default state returns. As soon as Section 230 is repealed, 19.17 will be the sole law of the land.

1. [U.S. Congress](#)
 - January 29, 2020 USMCA signed into law (P.L. 116-113).
 - July 1, 2020: USMCA entered into force.
2. [USTR](#)
 - [Footnote] 7: "For greater certainty, a Party may comply with this Article through application of existing legal doctrines as applied through judicial decisions."

This clearly demonstrates that we do not need a new law to replace 230, 19.17 can and will be enforced through the courts alone, this is allowed.

AT: What are Injunctions? How are they different from liability?

Injunctive relief is essentially a court-ordered method for actually addressing the issue, in this case harmful, illegal, or defamatory content on the Internet, rather than just settling the issue through monetary damages paid to victims or plaintiffs. It is thus more effective in actually creating a better Internet, reducing the amounts and effects of harmful content, and requires companies to actually enact change through court-ordered takedowns.

1. [RAND '01](#)
 - “Injunctions intervene directly to stop [the] infringement, whereas liability intervenes indirectly by making the infringement unprofitable.”

AT: Injunctions happen in the status quo under Section 230

This is true, but currently there is nothing that actually requires companies to abide by said injunctions as 230 protects them from ALL forms of liability, so harmful content can't be removed, and there are examples of foreign injunctions even being held back by Section 230.

1. [Citron '22](#)
 - a. “Of course, sites peddling non consensual intimate images [won't] participate in this effort. That is precisely why --- Without laws recognizing injunctive relief, sites that make money from [these] images [won't] halt these privacy violations on their sites.”
2. [Russell '20](#)
 - a. [Regarding injunctions,] “The U.S. court basically said ‘take a hike,’” “It made it clear it was not going to enforce the [foreign] order because, under U.S. law, a similar order would likely not have been granted against [the company]. That’s because the U.S. Communications Decency Act provides absolute immunity to online service providers such as Google and Facebook in respect to the content of others that they disseminate.”

AT: Injunctions create further harm, use time/resources, more people will file frivolous lawsuits when injunctive relief is allowed

There is no reason that large numbers of people would impulsively file frivolous lawsuits against companies without any legal basis or merit. Those suits would ultimately fail. Additionally, many states, including Arizona, California, Kentucky, and Texas, have explicit merit requirements.

[Citron '22](#)

“Of course, sites peddling non consensual intimate images [won’t] participate in this effort. That is precisely why --- Without laws recognizing injunctive relief, sites that make money from [these] images [won’t] halt these privacy violations on their sites.”

AT: A 230 Repeal means a USMCA/19.17 Repeal

Not true. They exist as separate laws, one part of the communications decency act, the other made US law by the USMCA Implementation Act. Tech companies specifically lobbied for 19.17 in case major changes were made to 230 and ensure most liability protections are in place. If the authors of the resolution wanted us to debate removing all liability protections, they would have created a resolution like “Internet companies should have liability for third-party content posted on their sites.”

AT: USMCA/19.17 wouldn’t have the international reach that 230 does

1. In the trade agreement, the parties all agreed they would maintain legal provisions modeled on 230. There is nothing in the agreement that only extends these protections to citizens or companies of these three countries - the agreement assures that the three nations would stand together in making this a legal standard. Additionally, many other nations have gone other directions. Like the EU, which models off of the DMCA takedown process. Second, 19.17 is part of a push for the US to enshrine a 230 modeled liability law internationally with Japan also adopting this after the USMCA was passed.
2. First, many other nations have gone in other directions. Like the EU, which models off of the DMCA takedown process. Second, 19.17 is part of a push for the US to enshrine a [230 modeled liability law internationally with Japan](#) also adopting this after the USMCA was passed.

AT: 19.17 only discusses “digital trade”

That is just the heading of the section in the agreement. Strong liability protections exist to encourage both domestic and international digital activity, with few websites being country specific. If a user in Canada is using facebook, that’s digital trade. Most of the internet is run by businesses, hence trade.

AT: FOSTA/SESTA would still exist under 19.17

It allows for it in the footnote of the article. However, it’s a specific understanding between the nations that a FOSTA style law is PERMITTED to exist, not that it will exist. For example Canada does not have a FOSTA exception, but it could add one if it wanted. If

230, as amended to include the FOSTA exceptions, is repealed, 19.17 doesn't make it separately exist unless a new law is passed.

AT: Section 230 influences internationally, repeal spills over

Despite its opposition, **Article 19.17 is a significant step forward for internet-based trade.** Depending on its success, **it could become the norm in other trade agreements around the world.**

AT: There would still be short-term confusion/chaos, companies wouldn't know 19.17

They are trying to claim that online platforms simply won't know that Article 19.17 is still protecting them when a repeal of Section 230 occurs, which is not plausible for two reasons.

1. **The tech industry itself created Article 19.17 of the USMCA.** [Dayen '20](#): "Big Tech succeeded in getting a 230-style provision into the reworked NAFTA, the USMCA. [It] already knew that its grip [on] Washington was loosening, so [it] managed to [implant] into a trade deal what they might lose if it were stand-alone legislation"
2. This argument also assumes that there is no public space for discussion surrounding the law and the legal status of any legislative topic, or that companies don't have legal teams. The NEG is trying to convince you that we live in a world where the tech industry just *forgets* about the provision it created, or where they can't interpret the law, don't buy that, they have no proof.

General Cards

230 and 19.17 are essentially the same, other than two differences. The first difference is the removal of FOSTA-SESTA. The second is the allowance of injunctions that can actually be enforced.

1. **First, it is important to establish that 230 and 19.17 are essentially the same when it comes to liability.** [Hollyman '20](#) The online liability provisions of USMCA are aligned with CDA Section 230. The purpose of these provisions is to ensure that interactive computer service providers are not held liable for third party content published on their platforms. An interactive computer service provider is defined in the USMCA as a "system or service that provides or enables electronic access by multiple users to a computer server."
2. **Second, FOSTA and SESTA are harmful, and they cause more harm than good.** [Berkeley '22](#) Within days of FOSTA's passage, online classified ad site Craigslist

removed its entire personal ad section. But because they potentially could be misused by sex traffickers— and the scope of liability under FOSTA was unknown—Craigslist made the risk-based decision to remove the entire personal ads section. FOSTA's enactment reduced the availability of platforms for sex workers. The lack of online platforms has reportedly driven many sex workers to bars or streets, increasing the danger that they face.

3. **Third, injunctions will finally be followed, creating a way to actually remove the harmful content.** [Krishnamurthy '20](#) While the liability shield the USMCA provides is quite similar to CDA § 230, the provisions differ in that the USMCA permits courts to order injunctions requiring platforms to take down content.
4. **Injunctions are inherently better than indirect liability.** [Maynard '14](#) One of the benefits of an injunction [is that] as a remedy, as opposed to a claim for damages or an account of profits.