

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of
Section 230 of the
Communications Act of 1934
To: The Commission

**American Principles Project Comment on the
NTIA Petition for Rulemaking and
Section 230 of the Communications Act of 1934.
By: Jon Schweppe and Craig Parshall**

In compliance with President Trump’s Executive Order on Preventing Online Censorship, signed on May 28th of this year, the National Telecommunications and Information Administration (NTIA) filed a petition to the Federal Communications Commission (FCC) asking that the FCC “expeditiously propose regulations” reflecting the Trump Administration’s statement of policy regarding 47 U.S.C. § 230. The FCC then opened the petition up for public comment (Docket RM-11862). Below is an official comment from American Principles Project on 47 U.S.C. § 230 and the NTIA petition.

Passing a legislative solution to amend 47 U.S.C. § 230 (Section 230) remains unlikely in the short-term, though that is likely the best remedy in the longer view. Given that political reality, American Principles Project (APP) supports the general effort of the Trump Administration to seek a remedy for Big Tech censorship through executive action. In particular, APP lauds the Administration for its effort to clarify the interaction between subparagraphs (c)(1) and (c)(2). Courts have almost unanimously declared the 26 words of (c)(1) to have absolute supremacy over what follows in (c)(2), which has virtually negated the meaning of (c)(2)’s “good faith” clause. This has resulted in a total absolution from responsibility over content for Big Tech platforms, who now abuse this special government benefit to build their monopoly power and exert unprecedented control over the free flow of information.

It is the view of APP that Section 230 still has value, but requires legislative amendment to achieve what should be its dual mandate: protecting children from pornography and obscenity, while simultaneously creating a digital public square where the value of free speech is cherished and where, as envisioned in the Findings of the original bill, “a true diversity of political

discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity” are promoted.

APP supports amending Section 230 for the following reasons:

1.) Section 230 is outdated.

Section 230, a provision of the Communications Decency Act (CDA), was sold to the American people as a necessary legal protection to remove pornography and obscenity from the Internet while also giving free speech the opportunity to flourish. Unfortunately, 25 years later, it is clear that the opposite has occurred: a few monopolistic Big Tech platforms are going out of their way to remove free speech from the Internet, while pornography and obscenity are flourishing like never before.

Was this really the outcome intended by Congress when it passed the CDA as part of the Telecommunications Act of 1996?

When the Supreme Court ruled on the constitutionality of the CDA, striking down many of its anti-pornography provisions (but leaving Section 230 intact), Justice John Paul Stevens argued that existing precedent giving government the right to regulate the “broadcast medium” couldn’t possibly apply to the Internet because the Internet “is not as ‘invasive’ as radio and television.” Today, a seventh grader with a smartphone has unlimited access to the most grotesque pornographic live streams imaginable. Very few porn sites have implemented any sort of age verification system to prevent this from happening.

Was this really the outcome intended by the Supreme Court in *Reno v. ACLU*?

Internet policy should reflect existing technology and existing market conditions. It’s clear that Section 230 was written under an antiquated digital regime. Therefore, Congress should consider amending the provision.

2.) Big Tech companies own the digital public square, and thus possess unprecedented control over the free flow of information.

Many have likened the development of the printing press in the 1500s to the Internet information revolution in the 21st century. But here is one devastating difference: a mere 50 years after the printing of the Gutenberg Bible, there were more than 1,000 similar printing presses operating across Europe, publishing more than 500,000 books. By contrast today there are only a few giant Big Tech platforms controlling the vast majority of online user-generated content.

These Silicon Valley behemoths operate the portal for almost all of America's online information: four of a handful of the world's largest social media services are owned by Facebook, a platform that reaches nearly 2.5 billion people. PC magazine, former Facebook co-founder Chris Hughes, and members of Congress have all publicly recognized Facebook as a "monopoly;" Amazon controls nearly half of all book sales in the U.S. and dominates all online retail sales generally; Apple's iTunes app store determines the commercial success or failure of every app so extensively that, as the Supreme Court recently noted in *Apple Inc. v. Pepper*, its signature "app" concept has become "part of the 21st-century lexicon;" and Twitter is reportedly the single digital source relied-on by 83 percent of all journalists who, in turn, deliver America's news.

And that's before even getting to the Google behemoth. Google owns the two most visited websites in the world: Google.com, where Google controls more than 90 percent of the total online search market, and YouTube.com, where Google monopolizes the online video space. Google also dominates the online advertising market, which has led the U.S. Justice Department to consider pursuing antitrust action against the \$1.1 trillion conglomerate.

The free flow of information and opinion is essential to our Constitutional Republic, not only for an informed electorate, but for the future of citizen discourse and debate on important social, religious, and political issues, particularly because citizens now get a bulk of their news from online sources. Even the Internet Association (IA), a lobbying group for Big Tech companies, made this case back during the Net Neutrality fight:

"The Internet must be a place free from censorship, discrimination, and anticompetitive behavior." - IA President and CEO Michael Beckerman, September 4, 2014,
<https://internetassociation.org/news/090414wheeler/>

"The Internet Association's comments filed at the FCC today took aim at the flawed arguments of broadband gatekeepers that seek to control speech on the Internet, censor content, and segregate the Internet into fast and slow lanes. The comments represent the consensus views of more than two dozen of the world's most-recognizable and successful Internet companies on the issue of net neutrality." - IA press release, September 10, 2014,
<https://internetassociation.org/news/091014fcc/>

But now these same market-dominant Big Tech companies are arguing in favor of censorship and viewpoint discrimination? If we are to rely on these companies to disseminate information, then they must be governed by — or at least strongly incentivized to play by — a set of rules that promote free speech and expression.

3.) Big Tech companies are suppressing free speech and free expression in the digital public square.

The Commission itself has noted the reality of viewpoint suppression by market dominant tech platforms. The FCC noted in its 2018 Restoring Internet Freedom Order, that -

“If anything, recent evidence suggests that hosting services, social media platforms, edge providers, and other providers of virtual Internet infrastructure are more likely to block content on viewpoint grounds.”

In support of that proposition, the Commission’s two-page long footnote number 983 listed a host of articles describing acts of Silicon Valley viewpoint suppression in the months leading up to the FCC’s order. <https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order>.

Big Tech platforms have: blatantly censored Senate Majority Leader Mitch McConnell and Republican Senator Marsha Blackburn; labeled a user’s call for Prayer for President Trump “hate speech;” blocked online ads from one of the largest TV cable programs because of its conservative views; blocked former Governor Mike Huckabee’s Facebook page; voiced opposition to President Trump’s next election bid; employed anti-conservatives as so-called “fact checkers” whose judgments are used to justify content and viewpoint bans; and have relied on the notoriously flawed “hate group” list of leftist Southern Poverty Law Center (SPLC) to deny donor benefits to conservative non-profit groups.

Big Tech platforms have also censored conservative Christian content by: blocking an ad by a Catholic college because it contained the iconic image of the Crucifix; striking a Christmas post containing a cartoon Santa kneeling before the manger of Jesus; banning online sale of a book written by a Christian who describes why she left the lesbian lifestyle; refusing an ad by a Lutheran synod for vacation Bible school because it advanced a “religious affiliation;” and removing posts by a New Testament scholar for using politically incorrect references to gender identity.

Big Tech platforms have also launched an ever-expanding chokehold on information and suppression of ideas that contradict the private values of Silicon Valley companies by: banning COVID-19 information or views (including posts by doctors) that are deemed politically incorrect or out of line with the views of the UN’s World Health Organization; imposing so-called “fact checks” and content warning labels on President Trump’s posts; blocking conservative political ads; banning ads under the manipulative label of “false information,” and limiting the ability for prolife groups to communicate, such as LifeNews, which posted that

Planned Parenthood is in the “abortion business” and then was punished by having its online reach restricted due to publishing what the platform outrageously called “partly false” statements.

And, of course, there are no consequences. Due to the “sweetheart deal” granted by Congress to online platforms 25 years ago in the Communications Decency Act (CDA), lawsuits challenging Big Tech bans against specific viewpoints have failed, making Big Tech virtually immune to civil litigation regarding their content moderation decisions. Meanwhile, these companies continue to flaunt this immunity to the public while displaying no concern for upholding free speech and free expression, no transparency with regard to their algorithms, no consistency in application of their policies and terms of services, and little to no disclosure to the public about how they manage content and data on their platforms.

4.) The American people strongly support pornography regulation.

APP conducted a 10-state poll on a number of issues in July. We asked:

“Should online pornography distributors be required by law to verify the age of users who access their content in order to help prevent children under the age of 18 from viewing obscene material?”

Arizona:

- 80% YES
- 20% NO

Georgia:

- 81% YES
- 19% NO

Iowa:

- 80% YES
- 20% NO

Kentucky:

- 82% YES
- 18% NO

Michigan:

- 78% YES

- 22% NO

Montana:

- 80% YES
- 20% NO

North Carolina:

- 83% YES
- 17% NO

Pennsylvania:

- 81% YES
- 19% NO

Texas:

- 84% YES
- 16% NO

Wisconsin:

- 81% YES
- 19% NO

In most cases, under Section 230, pornography distributors that fail to verify age still enjoy immunity from civil liability.

5.) The American people oppose Big Tech censorship.

As part of that poll, APP also asked:

“Should Big Tech companies such as Google, Facebook, and Twitter be allowed to censor speech on their platforms if that speech would otherwise be constitutionally protected in the public square?”

Arizona:

- 56% NO
- 44% YES

Georgia:

- 63% NO

- 37% YES

Iowa:

- 58% NO
- 42% YES

Kentucky:

- 64% NO
- 36% YES

Michigan:

- 60% NO
- 40% YES

Montana:

- 61% NO
- 39% YES

North Carolina:

- 61% NO
- 39% YES

Pennsylvania:

- 60% NO
- 40% YES

Texas:

- 57% NO
- 43% YES

Wisconsin:

- 59% NO
- 41% YES

Solution

APP has publicly offered a legislative solution that would amend Section 230 by:

- Eliminating protection from civil liability for market-dominant Big Tech platforms that fail to make content moderation decisions pursuant to policies and practices reasonably consistent with the First Amendment standard under clearly established Supreme Court Law applicable to state actors;
- Establishing a private right of action and broad compensatory damages for users who have had their expression treated adversely by a market-dominant Big Tech platform, if that speech would otherwise be protected against government state actor censorship under the First Amendment;
- Creating a certification process through the Federal Trade Commission (FTC) and Department of Justice (DOJ). These certifications, while potentially admissible in civil actions against platforms, would not be determinative. The FTC would be tasked with reviewing whether a platform is “market-dominant” such that the requirements of this amendment would apply. It would also evaluate whether the content moderation policies and practices of such a platform “reasonably” track the First Amendment rulings of the Supreme Court, while taking into consideration the complexity of current technology. DOJ would review and certify this process;
- Eliminating protection from civil liability for providers or users who actively participate in or materially contribute to illegal online conduct;
- Eliminating protection from civil liability for providers or users who facilitate or knowingly permit an adult having illicit digital contact with a child;
- Eliminating protection from civil liability for providers or users who facilitate or knowingly permit the distribution of content that is indecent, obscene, or harmful to children by failing to implement a system designed to effectively screen users under the age of 18 from accessing such content.

A blueprint describing that solution can be found here:

<https://americanprinciplesproject.org/wp-content/uploads/2020/07/APP-Sec230-paper.pdf>

Respectfully submitted this 27th day of August, 2020

American Principles Project, by
Jon Schweppe
Craig Parshall

Suite 1201
2800 Shirlington Rd.
Arlington, VA 22206
202-503-2010