

**MEMORANDUM**

5/20/2024

To: Members, Subcommittee on Communications and Technology  
From: Majority Staff  
Re: Communications and Technology Subcommittee Hearing

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**I. INTRODUCTION**

On Wednesday, May 22, 2024, at 10:00 a.m. (ET), the Subcommittee on Communications and Technology will hold a hearing in 2123 Rayburn House Office Building. The title of the hearing is “Legislative Proposal to Sunset Section 230 of the Communications Decency Act.” The following witnesses are expected to testify:

**II. WITNESSES**

- Carrie Goldberg, Founding Attorney, C.A. Goldberg, PLLC
- Marc Berkman, CEO, Organization for Social Media Safety
- Kate Tummarello, Executive Director, Engine

**III. BACKGROUND**

Section 230 was enacted as part of the Communications and Decency Act of 1996 (CDA).<sup>1</sup> Congress enacted it in response to *Stratton Oakmont v. Prodigy Services*,<sup>2</sup> a New York state court decision that held an online platform liable for defamatory content posted by a user on its message boards. The court concluded that the platform was a publisher of the content, and therefore subject to higher liability, because it exercised editorial control over the message board by moderating content.

As a result of this ruling, Internet platforms faced liability for the content posted on their website by a third-party user if the platform engaged in any content moderation or removal practices. Platforms would have to choose between subjecting themselves to liability or not moderating their websites at all. Then-Representatives Chris Cox (R-CA) and Ron Wyden (D-OR) feared this could lead to the denigration of the Internet, leading to the enactment of CDA Section 230.<sup>3</sup>

Congress originally enacted Section 230 to regulate obscenity and indecency on the Internet. Today, Section 230 is seen as a contributor to the modern Internet and a driver of

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<sup>1</sup> Telecommunications Act of 1996, P.L. 104-104, Title V, Section 230, *codified at* 47 U.S.C. § 230, <https://www.congress.gov/104/plaws/publ104/PLAW-104publ104.pdf>.

<sup>2</sup> *Stratton-Oakmont, Inc. v. Prodigy Services Co.* 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995), <https://h2o.law.harvard.edu/cases/4540>.

<sup>3</sup> Congressional Research Service, “Section 230: An Overview,” <https://ersreports.congress.gov/product/pdf/R/R46751>.

growth of websites that facilitate user-generated content, such as social media platforms. Section 230 protects Internet platforms from (1) liability for content created by users of their services and (2) for their decisions to moderate or remove user-generated content. Specifically:

(c) PROTECTION FOR “GOOD SAMARITAN” BLOCKING AND SCREENING OF OFFENSIVE MATERIAL

(1) TREATMENT OF PUBLISHER OR SPEAKER. 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.

(2) CIVIL LIABILITY. No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).<sup>4</sup>

For decades, courts have applied Section 230 very broadly and arguably more expansively than Congress intended.<sup>5</sup> However, with the creation of generative artificial intelligence (AI), courts may soon be confronted with unavoidable calls to reshape Section 230 in the context of whether it applies to protect the generative AI systems that will drive the Internet’s future.<sup>6</sup> Litigation involving generative AI will force courts to revisit Section 230 in a manner that will vastly impact the Internet.

Over the past decade, Congress has considered numerous proposals to reform Section 230. The last successful proposal was the Stop Enabling Sex Traffickers Act (SESTA) of 2017, which was enacted as part of the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) of 2017 (P.L. 115-164).<sup>7</sup> This law created an exception to Section 230 to permit state law enforcement officials to prosecute websites that knowingly assist in or facilitate sex trafficking. Specifically, the law states:

(a) IN GENERAL.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

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<sup>4</sup> 47 U.S.C. § 230.

<sup>5</sup> See, e.g., *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

<sup>6</sup> Graham Ryan, *Generative AI Will Break the Internet: Beyond Section 230*, Vol.37 Harvard Journal of Law and Technology Digest (Spring 2024), <https://jolt.law.harvard.edu/assets/digestImages/Generative-AI-Will-Break-the-Internet-Beyond-Section-230-Final-Review.pdf>.

<sup>7</sup> Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164 (2018), <https://www.congress.gov/bill/115th-congress/house-bill/1865> (SESTA/FOSTA).

“(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, United States Code, 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, United States Code; 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, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant’s promotion or facilitation of prostitution was targeted.”<sup>8</sup>

Other proposals include eliminating a platform’s Section 230 liability protection for content that exploits children,<sup>9</sup> modifying the procedural aspects of Section 230,<sup>10</sup> requiring more transparency and accountability to users regarding content moderation decisions,<sup>11</sup> clarifying the meaning of the protections,<sup>12</sup> or ultimately repealing Section 230.<sup>13</sup> None of these proposals have been considered by either chamber of Congress due to strong opposition from the various companies who benefit from this blanket liability protection and see no incentive to engage in good faith reform.<sup>14</sup>

This is why Chair Cathy McMorris Rodgers (R-WA), and Ranking Member Frank Pallone (D-NJ) released a bipartisan discussion draft that would sunset Section 230 of the Communications Act effective on December 31, 2025. The intent of the legislation is not to have Section 230 actually sunset, but to encourage all technology companies to work with Congress to advance a long-term reform solution to Section 230.<sup>15</sup>

#### IV. LEGISLATION

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<sup>8</sup> *Id.*

<sup>9</sup> EARN IT Act of 2023, S. 1207 118<sup>th</sup> Cong. (2023).

<sup>10</sup> SAFE TECH Act, S. 299, 117<sup>th</sup> Cong. § 2(1) (2021).

<sup>11</sup> Internet PACT Act, S. 483, 118<sup>th</sup> Cong. (2023).

<sup>12</sup> Online Freedom and Viewpoint Diversity Act, S. 4534, 116<sup>th</sup> Cong. (2020).

<sup>13</sup> *See, e.g.*, S. 2972, 117<sup>th</sup> Cong. (2021); H.R. 8896, 116<sup>th</sup> Cong. (2020); *Cf.* 21<sup>st</sup> Century FREE Speech Act, S. 1384, 117<sup>th</sup> Cong. (2021).

<sup>14</sup> *E.g.*, John Eggerton, *CTA: Sec. 230 Reform Is ‘Constitutional Grenade’*, The Media Institute (Sept. 3, 2020), <https://www.mediainstitute.org/2020/09/03/cta-sec-230-reform-is-constitutional-grenade/>; David Morar, *Making the Internet Work for Everyone: Preserving Section 230’s Critical Protection*, New America (Dec. 19, 2023), <https://www.newamerica.org/the-thread/internet-section230/>; *CCIA Statement on Importance Of Section 230 Ahead of Senate Judiciary Hearing*, Computer & Communications Industry Association (Mar. 8, 2023), <https://ccianet.org/news/2023/03/ccia-statement-on-importance-of-section-230-ahead-of-senate-judiciary-hearing/>.

<sup>15</sup> Reps. Cathy McMorris Rogers and Frank Pallone, *Sunset of Section 230 Would Force Big Tech’s Hand*, *The Wall Street Journal*, <https://www.wsj.com/articles/sunset-of-section-230-would-force-big-techs-hand-208f75f1>.

The Subcommittee intends to discuss the following legislation:

1. **H.R. \_\_\_\_\_, To Provide a Sunset for Section 230 of the Communications Decency Act (Rep. Cathy McMorris Rodgers)**

The discussion draft is led by Chair Cathy McMorris Rodgers (R-WA) and Ranking Member Frank Pallone (D-NJ). The draft would sunset Section 230 of the Communications Decency Act effective on December 31, 2025.

**V. KEY QUESTIONS**

- How has the landscape of online content and user behavior evolved since the enactment of Section 230, and what challenges does this pose to the current legal framework?
- What role does Section 230 play in shaping the responsibilities and liabilities of Big Tech in addressing harmful content, misinformation, and hate speech?
- What are the potential benefits and drawbacks of different reform proposals to amend Section 230?

**VI. STAFF CONTACTS**

If you have any questions regarding this hearing, please contact Kate O'Connor or Giulia Leganski of the Committee Staff at (202) 225-3641.