



What is Section 230?: A Legislative Primer

Prepared by

Shreyanka Mirchandani Changaroth¹ and Lateef Mtima² of the Institute for Intellectual Property & Social Justice (IIP SJ), under a grant from The Wikimedia Foundation’s Knowledge Equity Fund.

Table of Contents

<i>Executive Summary: About Section 230</i>	2
<i>A. Introduction</i>	3
<i>B. Background</i>	4
<i>C. How does Section 230 work?</i>	5
<i>D. How has Section 230 shaped the internet?</i>	5
<i>E. Section 230’s effect on marginalized communities</i>	6
<i>F. Should Section 230 Be Revised? Current Conversations and Concerns</i>	7
Concerns about the Section 230 “Status Quo”.....	8
Concerns about reforming Section 230.....	8
<i>G. Reform Possibilities</i>	9
<i>H. Conclusion</i>	10
<i>Appendix – Legislative History and Important Cases</i>	11

¹ Wikimedia Race and Knowledge Equity Fellow 2022-23

² Professor of Law at the Howard University School of Law, and Founder and Director of the Institute for Intellectual Property and Social Justice



Executive Summary: About Section 230

Section 230 of the Communications Decency Act of 1996³ protects interactive computer service providers (platforms such as Instagram, Shopify, and Google) and their users from being held legally responsible for content created by third parties.⁴ For example, under Section 230, Instagram is not liable for the content posted by Instagram users. See p. 5.

Purpose of this Activist/Legislative Primer

Section 230 is currently under review by the United States Supreme Court in the case of *Gonzalez v Google*. The Court is expected to interpret and clarify the provisions and applications of the statute. Some critics argue that Section 230 should be repealed or updated, while others argue in favor of maintaining its status quo. See pp. 7-9. This Primer is intended to provide an overview of the statute and the implications for Internet speech and activism, and particularly the impacts on historically marginalized communities.

Section 230's Influence

Section 230 is credited with shaping the Internet of today. See pp. 5-6. The immunity granted by the statute protects platforms from the risk of legal liability for content developed by platform users who post content. This has resulted in many important social benefits including:

- Promotion of free speech and sharing of knowledge and information
- Enhanced opportunities for grassroots activism and organizing
- Self-regulation and content moderation by platforms
- Innovation and optimization of internet services

Section 230 has also impacted the interests of Historically Marginalized Communities (see pp. 6-7) in both beneficial and adverse ways, including:

- Democratization and wide accessibility of knowledge
- Promotion of civic engagement and activism
- Increase in economic empowerment opportunities
- Shielding discriminatory algorithms

Should Section 230 Be Revised? Current Conversations and Concerns. See pp. 7-10.

Some critics of Section 230 argue that some platforms misuse the statutory immunity to censor viewpoints they disagree with; other critics argue that platforms should do more to use Section 230 to restrict illegal and socially harmful content more effectively, such as hate speech. Amending Section 230 immunity could put a greater onus on platforms to determine what is lawful content. This can be concerning for several reasons, in particular:

- More liability could mean more censorship by platforms to avoid the risk of legal action, particularly in connection with non-traditional speech.
- Less liability could mean more reliance on automated moderation to identify and remove unlawful third-party content.

³ Enacted as part of the Communications Decency Act of 1996

⁴ There are some exceptions to the section 230 immunity. For instance, section 230 will not protect an ISP or platform user where their online behavior violates federal criminal and IP laws, and certain electronic privacy and sex trafficking laws.



- More automated moderation could mean greater reliance on systemically problematic moderation and filtering tools (such as algorithms) that could censor legitimate and, particularly, marginalized voices.

A. Introduction

In the 1990s, as internet usage began to grow exponentially, it became clear that the question of platform liability for user content needed to be addressed – should platforms be held liable for the unlawful content posted by its users?

Two conflicting court decisions in the early 1990s⁵ resulted in the introduction of Section 230 of the Communications Decency Act 1996 (hereinafter “Section 230”), which aimed to ensure that the internet remains an open and unrestricted forum for free speech, while at the same time enabling platforms to undertake reasonable measures to protect the integrity of their forums. It did this by shielding online service providers from being sued for the content of third parties on their platforms, including platforms which implemented content moderation policies to keep their communities safe.

Since its introduction, the section has been interpreted as providing wide immunity to big tech platforms for all manner of content posted by third-party users on their platforms. In the last decade or so, some critics have argued that this expansive immunity has disincentivized platforms from taking action to curb rampant misinformation, disinformation, terrorism, and hate speech online.⁶ This has resulted in many attempts to reform the section, with only one attempt succeeding – in 2018, a carve-out was added requiring platforms to remove content that violated sex trafficking laws.⁷

In 2022, the Supreme Court determined that it would undertake a review of the limits and applications of Section 230 in the case of *Gonzalez v Google*. The Court will hear arguments in February 2023, and will undoubtedly take this opportunity to make a statement concerning the appropriate extent and limits of the section. In the months that follow, Congress is likely to receive increasing pressure to consider amending the statute.

With reform on the horizon, the conversations around Section 230 are now more relevant than ever. However, any envisaged review or reform of section 230 must take account of the interests of communities that have historically lacked equal access to media channels and knowledge and information resources. Section 230 has promoted the Internet as a

⁵ *Cubby Inc. v. CompuServe Inc.* held that platforms which took no action to moderate content should be immune from liability, while subsequently *Stratton Oakmont Inc. v. Prodigy Services. Co.* held that platforms could be held liable for taking even responsible action to protect the public from false information.]

⁶ Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans Section 230 Immunity*, 86 *Fordham L. Rev* 401 (2017)

(<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5435&context=flr>)

⁷ FOSTA-SESTA (or *Allow States and Victims to Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act*)



venue for marginalized communities to disseminate non-traditional viewpoints, and to otherwise provide access to knowledge and information previously unavailable to them.⁸

It is imperative that civil rights and social activist organizations ensure that their voices and concerns regarding Section 230 are heard. This Primer is intended to provide an overview of the statute and the implications for Internet speech and activism, and particularly the potential impacts on historically marginalized communities.

B. Background

The advent of the Internet meant that online platforms quickly became intermediaries for large amounts of content produced and disseminated by third-party users of these platforms. It soon became clear, however, that platforms were sometimes used to disseminate illegal content by third-party users. This raised the question – should the platforms be held responsible for hosting illegal content posted by their users?

Section 230 was the legislative response to this problem: it immunized Internet platforms from legal claims arising in connection with the content created or distributed by users of their platforms:

“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1)

The rationale for this was that if businesses could be held liable for such content, they would feel compelled to protect their interests by engaging in heavy-handed censorship on their platforms, and this in turn could have a chilling effect on speech. Given that the internet was increasingly becoming a widely attended public square for the exchange of ideas, the protection of free speech online was especially important to allow ideas to grow and for society to flourish.

It was Congress’s intent that the internet remain “a forum for a true diversity of political discourse, [...] and myriad avenues for intellectual activity,” which “ha[s] flourished with a minimum of government regulation.”⁹ By immunizing platforms from third-party user liability, platform purveyors could freely offer and develop their platforms regardless of how third-party users might choose to use these services.

⁸ See for e.g. Deen Freelon et al., *How Black Twitter and other social media communities interact with main-stream news*, Knight Foundation (2018); Minjie Li, *Visual Social Media and Black Activism: Exploring How Using Instagram Influences Black Activism Orientation and Racial Identity Ideology Among Black Americans*, 99 *Journalism & Mass Commc’n Q.* 718 (2022) _

⁹ § 230(a)(3)-(4) *Communications Decency Act*



C. How does Section 230 work?

Publishers vs distributors. Section 230 treats online service providers as distributors rather than publishers. A publisher can decide “whether to publish, withdraw, postpone or alter content”¹⁰ and so it takes on the role of shaping the content that is eventually published. In contrast, a distributor of third-party content, such as a book store, cannot be held liable for content produced by others as they play no role in shaping the content. Internet users who re-post existing content can also rely Section 230, as they will also be treated as “distributors” for the purposes of the section.

Liability for third-party content. Section 230 states that platforms cannot be liable for third-party content, and courts have interpreted this to mean a wide immunity regardless of the nature of content or its egregiousness.

Content moderation. While Section 230 shields platforms from liability for the content posted by their users, it also shields them from liability for taking action to remove content they deem inappropriate for their platforms:

“No provider or user of an interactive computer service shall be held liable on account of [...] 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;” 47 U.S.C. § 230(c)(2)(A)

Accordingly, platforms are free to remove or leave up content on their platforms as they see fit. Section 230 shields platforms in both scenarios, and thus encourages platforms to proactively develop and implement their own content moderation policies.

D. How has Section 230 shaped the internet?

User-generated content, a cornerstone of the internet, can exist only because of the safe harbor provided by Section 230 to internet intermediaries, including online platforms and users who repost content previously posted by others. Intermediaries, who act as conduits of speech for others, can operate or use platforms and rest assured that any content posted by will not be legally attributed to them. Section 230 has thus been vital in shaping and developing the internet of today in many important ways.

Increased interactivity and innovation of internet services. Instead of merely delivering content to users, websites were able to develop their services to better serve their users by allowing users to generate their own content. These new innovations were possible because websites did not have to worry about liability for unlawful behaviour by users.

¹⁰ Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997)



Economic growth. The internet has become the biggest economic driver globally, increasing wealth and job opportunities for all. It has been able to do this primarily because of intermediaries, including social media influencers, which have in turn been aided by legal protections for third-party content they host, including advertisements and listings for goods and services. Without these protections, the internet would not have become the economic force it now is.

Knowledge for all. With a click of the mouse, internet users can now access knowledge and information posted by third-party users. Sites such as Wikipedia are able to rely on millions and millions of users to maintain their online encyclopaedia. Section 230 immunity has allowed websites to base their businesses on the content and voices of third-party users, which has in turn allowed the internet to become a source of knowledge for anyone with an internet connection.

A platform for all voices. Unlike traditional media, information available on the internet is not subject to vetting by a select few who have power to control what information and narratives to push to the general public. Voices from all backgrounds can contribute stories, find like-minded communities online, and enjoy the millions of platforms available online.

The rise of social media platforms. Comments, forums, and user reviews exist because of Section 230; Section 230 immunity allows websites to do all of the above without being sued. Even the smallest risk of liability would be enough for websites to scale back services, and websites like Instagram, Yelp, and AirBnb are unlikely to exist or offer the services they provide today.

Encouraging self-regulation. Platforms understand that to attract and retain users, they need to provide a space that is safe and welcome to all. For this reason, many platforms actively self-regulate by moderating content they consider harmful to their communities. Section 230 encourages proactive content moderation by assuring platforms that doing so will not expose them to liability for “wrongful or inadequate” moderation.

E. Section 230’s effect on marginalized communities

If Section 230 did not exist, many platforms might feel the pressure to engage in heavy-handed pre-emptive censorship to ensure that unlawful or *potentially* unlawful content is deleted. Pre-emptive censorship for fear of liability would cast a wide net, capturing all types of information, including lawful content and protected speech, and particularly from marginalized communities. More often than not, where censorship is permitted to flourish, groups that already face discrimination are the first to be silenced. Section 230 has been key in fostering a space for marginalized communities in mainstream discourse in various different ways.



Amplification of voices of colour. Unlike traditional mainstream media, social media is available to everyone with minimal barriers. Social media platforms have provided marginalized communities with vast opportunities to be heard. Communities that were historically left out of mainstream media no longer have to contend with the traditional gatekeepers of media or powerful commercial intermediaries to reach audiences. They are free to forge their own narratives and amplify their voices on social media platforms, who in turn are able to provide this space due to the protections provided by Section 230.

Promotion of civic engagement and activism. New technologies have given historically silenced voices increased opportunities to speak and publish, and in turn influence politics and culture. Frictionless access to platforms allows communities to amplify their voices, and further their goals and civic participation without the threat of being silenced. Marginalized communities can now easily and publicly shine a light on issues that are relevant to their communities and cultures.¹¹ Section 230 thus ensures that platforms can provide a forum for all voices, ideas, and stories, even those that could be perceived as a threat to the groups in power.

Increase in creative and economic opportunities. The internet is responsible for much of the uptake in entrepreneurship and increased economic empowerment of marginalized communities. Financial and non-financial barriers that have traditionally prevented marginalized individuals from pursuing economic or creative opportunities are minimized and even eliminated on the internet due to the low cost of business formation and expansion, and increased access to customers and audiences. Members from marginalized communities have participated in the creator economy and started lucrative businesses at unprecedented rates since the introduction of the internet and social media.¹²

Democratization of knowledge for underserved communities. Traditional systems of knowledge have often only furthered systemic racial and class inequalities. Deserving individuals from less privileged backgrounds have been denied the same opportunities as the privileged. The internet, however, has allowed knowledge to move from centralized sources like universities and news publishers, to the internet – a decentralized and accessible source of knowledge for all. Knowledge is now widely available and no longer the domain of the privileged few in society who have historically held control over cultural and political discourse.

F. Should Section 230 Be Revised? Current Conversations and Concerns

¹¹ See for e.g. Jenna Wortham, *How a New Wave of Black Activists Changed the Conversation*, N.Y. Times (Aug. 25, 2020) (<https://www.nytimes.com/2020/08/25/magazine/black-visions-collective.html>)

¹² See for e.g. Taylor Lorenz, *The New Influencer Capital of America*, N.Y. Times (Dec. 11, 2020) (<https://www.nytimes.com/2020/12/11/style/atlanta-black-tiktok-creators.html>)



Given that section 230's effect has been divergent and manifold, it has been the source of much controversy. Not only has it been credited with "creating the internet"¹³, it has become one of the most hotly debated internet law issues in the US and beyond.

On one side of the aisle, critics of Section 230 believe that it has caused the proliferation of hate speech, sex trafficking, terrorist recruitment, and harassment. They believe that reform is necessary to address systemic harms that have found their way onto the internet.

On the other side, there are concerns that any sort of reform will have far-reaching ramifications and unintended consequences that will threaten our democracy and safety.

In late February 2023, the Supreme Court will hear the case of *Gonzalez v. Google*, where claimants are attempting to argue that Google recommended terrorist-related content that ultimately resulted in the 2015 terrorist attacks in Paris. A central issue in the case is whether Section 230 protects recommendations and algorithms created by platforms that recommend certain types of content. The Court's decision will impact the scope and breadth of Section 230 and what kinds of content are shared on the Internet.

Concerns about the Section 230 "Status Quo"

Online harms. One of the most pervasive criticisms of the section is that it allows the proliferation of sexist, racist, violent, and bigoted content that attacks and harms various minoritized groups. Many believe that platforms should take more action to remove the especially egregious content they host, such as hate speech, terrorist content, violence, child abuse material, and non-consensual distribution of intimate images.

Incentivizing bad behaviour. The broad and sweeping immunity provided by the section could mean that platform operators have no incentive to respond to most criminal behaviour by users on their platforms.

Protection of discriminatory algorithms. Algorithms with inherent bias that process individual data will damage opportunities for minorities and continue the cycle of systemic oppression. Algorithms designed or used by platforms and that inadvertently or deliberately facilitate discrimination are covered by Section 230 immunity.

Increase in unfettered discrimination online. Victims of online assault and harassment are overwhelmingly members of marginalized communities – women, people of color, and sexual minorities. Section 230 immunity means that platforms do not have to take down illicit material, and victims have no way of compelling them to do so. This can have the effect of silencing the voices of the marginalized and turning them away from online spaces.

Concerns about reforming Section 230

¹³ Jeff Kosseff, *The Twenty-Six Words That Created the Internet* (April 2019: Cornell University Press)



Reforming Section 230 would almost certainly mean reducing the immunity granted to intermediaries. However, reducing immunity without a careful and balanced consideration of all possible outcomes will have damaging and unintended consequences – platforms will be forced to take measures that could result in over-moderation and collateral censorship of marginalized voices, and thus shrink the internet as we know it.

Over-moderation and collateral censorship. Imposing liability will put pressure on intermediaries to implement heavy-handed, far-reaching, “perfect” content moderation strategies to avoid any possibility of unlawful – and perhaps merely “objectional” - content slipping through the cracks. If any unlawful content does slip through the cracks, the “perfect” moderation strategy will persuade courts that the intermediary did not know of the unlawful content. However, such strategies could see intermediaries – including users who repost content - removing legitimate borderline or non-mainstream content to safely ensure that they are operating within the limits of the law.

Reform of the section may not appropriately target harmful behaviour, and instead shrink the internet. Using very specific harmful behaviour as a basis for law reform may not accurately target harmful behaviour and, worse, may further result in harmful unintended consequences. For instance, FOSTA-SESTA was a well-meaning legislation that aimed to target sex-trafficking conduct on online platforms. However, some members of the sex worker industry have argued FOSTA-SESTA has made it necessary that they return to dangerous, “underground” venues to pursue lawful activities through which they make an independent living. (see more on FOSTA-SESTA in Appendix p. 14)

Platforms are ill-equipped to enforce the law. Platforms as content intermediaries host massive amounts of speech. As private, profit-making companies, they are ill-equipped to determine the lawfulness of content. They will likely fall back on over-moderation.

Over-reliance on discriminatory algorithms to moderate large swaths of content. Platforms use a mixture of humans and algorithms to moderate content online. Algorithms are essential content moderation tools as they can analyze content at speeds and scales that humans alone cannot. However, they can be poor substitutes for human beings because of their inability to interpret nuance and context. There is also evidence that existing negative biases in society infiltrate algorithms when they are created, and in turn, perpetuate these biases in the online world. More automated content moderation could mean more automated discrimination on online platforms.

G. Reform Possibilities

Unlike the First Amendment protections, Section 230 immunity was created by Congress. This means that Congress is free to amend the section at any time. There have been various legislative efforts and proposals for reform (see Appendix for full history). This section will look at the various reform possibilities that might be considered by Congress (and some that have been considered).



- Placing limits on Section 230 immunity unless certain conditions are met;
 - No immunity unless Industry-standard / best practices followed i.e. deny immunity to ISPs and users who have knowledge of unlawful content
 - Provide immunity only on the condition that reasonable steps have been taken to prevent proliferation of unlawful content
 - Revoke s230 immunity “as a penalty for failing to implement effective mechanisms, such as permitting access to inappropriate content by minors. Similar such “regulatory” approaches would deny Section 230 immunity to ISPS who use algorithms to distribute content or to display behavioural advertising.”
- Require the removal of objectionable content;
- Creating carveouts for individual harms;
 - However, there can be unintended consequences if done without careful consideration and when blinded by a fact-specific inquiry such as in the case of FOSTA-SESTA
- Imposing a “reasonable standard of care” on platforms;
 - However, having such a standard apply across the board would have many unintended consequences (possibly even more than carveouts). It could also cause more collateral censorship and increase confusion around the legal limits and standards for provision of internet services.
- Expand enforcement of Section 230 to states;
- Study the effects of any Section 230 amendment before introducing it;
- No reform. Instead, continued or increased reliance on self-regulation, including establishing industry-standards / best practices

H. Conclusion

Any inquiry into reforming Section 230 should include a careful balancing exercise to minimize the risk of unintended consequences. That said, reducing or revoking section 230 immunity will certainly affect the availability of free speech and knowledge and information dissemination through the Internet. Civil rights organizations, social activists, and the communities they serve, particularly communities that have been traditionally marginalized and underserved, should take action to ensure that their interests are considered in the judicial and legislative efforts to interpret, implement, and/or amend Section 230.



Appendix – Legislative History and Important Cases

Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
1991	<i>Cubby Inc. v. CompuServe Inc.</i>	District Court for the Southern District of New York District Judge Peter K. Leisure	Because CompuServe did not engage in any content moderation before content was posted, it was acting as a distributor without any knowledge of the third-party content, and was held as not being liable for the content it distributed unless it had reason to know of the unlawful nature of the content.	Judgment
1995	<i>Stratton Oakmont Inc. v. Prodigy Services Co.</i>	New York Supreme Court Justice Stuart L. Ainslie	Prodigy was held liable as a publisher because it moderated content it found offensive, but did not remove other material that was potentially offensive or unlawful. It was therefore responsible for any unlawful content found on its platform since it exercised editorial control.	Judgment
	Communications Decency Act (struck down)	Senator James Exon (D-NE)	One of the bill's purposes was to regulate obscenity and indecency online. It would amend telecommunications law by making it illegal to show minors obscene or indecent content online.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			Struck down.	
1996	Amendment to CDA, Section 230 (signed into law)	Chris Cox (R-CA) Ron Wyden (D-OR)	This amendment survived even though the larger CDA got struck down. It got signed into law as part of the Telecommunications Act.	
1997	<i>Zeran v. America Online Inc</i>	Court of Appeals for 4 th Circuit Chief Judge J Harvie Wilkinson III Circuit Judge Donald S. Russell Judge Terrence Boyle (E.D.N.C.)	Section 230's first major challenge – AOL was sued for failing to remove ads that wrongly connected a man to the Oklahoma City bombing. Ruling: Court ruled in favor of AOL, citing Section 230. The court's interpretation of Section 230 as providing broad immunity to intermediary platforms has been widely relied on by courts hearing Section 230 cases ever since.	Judgment
2003	<i>Batzel v. Smith</i>	Court of Appeals for the 9 th Circuit Judges William Canby, Ronald M. Gould, and Marsha Berzon	Robert Smith provided harmful and allegedly false information about Ellen Batzel to a website about stolen artwork. The operator of the website lightly edited Smith's original email and forwarded it to the website's listserv. It was held that the website was a publisher because it had	Judgment



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			edited the content, but that the edits to the original email were too minor to have materially contributed to the content,. The website and operator could were not liable.	
2008	<i>Fair Housing Council of San Fernando Valley v. Roommates.com</i>	Court of Appeals for the 9 th Circuit Sitting judges (en banc): Alex Kozinski (Chief Judge), Stephen Reinhardt, Pamela Ann Rymer, Barry G. Silverman, M. Margaret McKeown, William A. Fletcher, Raymond C. Fisher, Richard A. Paez, Carlos Bea, Milan D. Smith, Jr., N. Randy Smith	First case to place limit on broad Section 230 immunity since <i>Zeran</i> . Section 230 cannot apply to a platform that induces illegal content. Roommates.com presented users with a compulsory questionnaire to match renters with individuals renting out rooms. It was held that the questionnaire was not protected by Section 230 because for this portion, it was considered a content publisher, and the content in questions violated the Fair Housing act. However, the section titled “Additional Comments” could benefit from protections because Roommates.com was not a content provider for this portion of the website.	Judgment
2009	<i>Barnes v. Yahoo</i>	Court of Appeals for the 9 th Circuit	Similar to <i>Zeran</i> , the claimant contacted the platform, Yahoo, to have fake and damaging personal information removed	Judgment



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			<p>from the platform. She was assured by a Yahoo director that the content would be taken down. The content was not taken down and Barnes filed a claim against Yahoo for breaking its promise.</p> <p>While Yahoo could not be held liable for failing to remove content, Section 230 did not apply to the promissory estoppel claim, which did not treat Yahoo as a publisher but as a party to a contract – Yahoo was held liable for breaching the promise/contract.</p>	
2014	<i>Jones v. Dirty World Entertainment Recordings LLC</i>	6 th Circuit Court of Appeals Judges Ralph B. Guy, Julia Smith Gibbons, Richard Allen Griffin	Adopted <i>Roommates'</i> “material development” test that could limit a platform’s liability where they materially contribute to the illegality of the content. In this case, the website and operator were found not to have materially contributed, and were therefore not liable.	Judgment
2017	FOSTA-SESTA (Allow States and Victims to Fight Online Sex Trafficking)	Ann Wagner (R-MO)	Amended Section 230 by making it illegal to knowingly assist, facilitate, or support sex trafficking on one’s online platform	Legislation



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Act / Stop Enabling Sex Traffickers Act)		Note: this legislation was preceded by the SAVE Act, which targeted platforms that knowingly advertised sex trafficking victims without amending Section 230. It aimed to eradicate a site called Backpage.com, which had been used as a platform for numerous instances of child sex trafficking. However, the legislation was unsuccessful in doing so and has been unsuccessful in targeting any other platform since its passage into law. This led to Congress revisiting the issue and ultimately passing FOSTA-SESTA which has since been heavily criticized for failing to address sex trafficking issues, targeting legitimate sex workers, causing internet services to exit the market despite their legitimate offerings, and for generally being unnecessary since the law without FOSTA-SESTA already comprehensively covers sex-trafficking crimes.	
2019	SAFE SEX Workers Study Act (SESTA/FOSTA Examination of	Elizabeth Warren (D-MA) Ro Khanna (D-CA) Ron Wyden (D-OR) Barbara Lee (D-CA)	Would require Department of Health and Human Services and the Department of Justice to “study the impacts of the reduction in access to certain websites	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Secondary Effects for Sex Workers Study Act)		and other interactive computer services (resulting from FOSTA-SESTA) on individuals engaged in adult, consensual sex work”, especially the impacts on their health and safety when engaging in transactional sex, and if the amendment reduced human trafficking. Referred to Committee on the Judiciary.	
Jan 2020	-	Joe Biden	President-elect Biden proposes revoking Section 230 entirely	Article in The Verge
Mar 2020	EARN IT Act (Eliminating Abusive and Rampant Neglect of Interactive Technologies Act)	Lindsey Graham (R-SC) Richard Blumenthal (D-CT)	Aims to amend Section 230 to require tech companies to take steps to reduce child sexual exploitation on their platforms if they wish to benefit from Section 230 benefits. No longer active.	Bill
May 2020	Presidential Executive Order	Then-President Donald Trump	Preventing online censorship by targeting section 230 and social media	Report by Congressional Research Service
Jun 2020	Justice Department issues recommendations for Section 230 reform	-	Four main recommendations: 1) "incentivizing online platforms to address illicit content,"	Press release



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			<p>2) "clarifying federal government enforcement capabilities to address unlawful content,"</p> <p>3) "promoting competition" and</p> <p>4) "promoting open discourse and greater transparency."</p> <p>Elements of these recommendations have popped up in a few pieces of proposed legislation since</p>	
	Limiting Section 230 Immunity to Good Samaritans Act	Josh Hawley (R-MO) Marco Rubio (R-FL)	<p>Would prevent tech companies from receiving Section 230 protections unless they update their terms of service to operate under a good faith standard, effectively forcing them to write a duty of good faith into their contract with users. It would make them liable to pay a \$5,000 fine if they violate those terms.</p> <p>No longer active.</p>	Bill
	PACT Act (Platform Accountability and Consumer Transparency)	Brian Schatz (D-HI) John Thune (R-SD)	To benefit from immunity, platforms would need to: 1) provide clarity around decisions on content that is hosted and moderated; 2) provide avenues for users to report illegal content; 3) establish call centers, email addresses, and complaint	Press release Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			<p>systems to receive and track user complaints; 4) remove content within 24 hours if illegal and 14 days if in breach of platform’s policies; 5) provide a notification and appeals systems for users whose content has been taken down; 6) issue quarterly transparency reports on complaints and enforcement.</p> <p>Small businesses with less than 1 million monthly visitors and revenue of less than \$2 million are exempt from the call center requirement and have less strict deadlines for content takedown.</p> <p>No longer active (updated version introduced in March 2021 still active – see below)</p>	
	Ending Support for Internet Censorship Act	Josh Hawley (R-MO)	Would withdraw Section 230 immunity unless company has obtained immunity certification from FTC. To receive the certificate, company would need to provide clear evidence that it does not (and did not in a prior 2-year period)	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			engage in politically-biased content moderation. No longer active	
	Stopping Big Tech's Censorship Act	Kelly Loeffler (R-GA)	Requires online platforms to take reasonable steps to prevent or address unlawful use of its platform by third parties before the platform can qualify for Section 230 immunity. No longer active.	Bill
	Stop the Censorship Act of 2020	Paul Gosar (R-AR)	Would prevent companies from invoking Section 230 as a defense if they restrict access to content that they consider to be objectionable, save for a narrow exception of unlawful, violent or terrorist content. No longer active.	Bill
Jul 2020	Behavioural Advertising Decisions Are Downgrading Services (BAD ADS) Act	Josh Hawley (R-MO)	Would not grant section 230 immunity to tech companies that display manipulative, behavioral ads or provide data to be used for them.	Press release Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Online Freedom and Viewpoint Diversity Act	Roger Wicker (R-MI) Marsha Blackburn (R-TN) Lindsey Graham (R-SC)	Companies would receive Section 230 immunity only if they meet an objective reasonableness standard when moderating content. No longer active.	Bill
Sept 2020	DOJ proposes new Section 230 legislation			Press release
	See Something Say Something Online Act	Joe Manchin (D-WV) John Corryn (R-TX)	Online platforms would be required to report to the DOJ any suspicious transmission that they detect as terrorist activity, drug offenses, or violent crimes. Only requires reporting once the information is known, it does not require platforms to have full knowledge of all unlawful content on their platforms. Platforms that fail to report will be denied Section 230 immunity and may be held liable as publisher. No longer active.	Bill
	Statement from Justice Clarence Thomas		Justice Thomas thinks Supreme Court decision on the limits of the section is necessary as lower courts have been	



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			interpreting the statute too broadly and giving internet companies too much freedom and immunity.	
	FCC Chairman announcement on Section 230			
	Don't Push My Buttons Act	John Kennedy (R-LA) Paul Gosar (R-AR)	House and Senate versions are same. Companies will not be allowed to use Section 230 immunity if they collect user data and use that data to deliver content to users, unless users have intentionally asked to receive such content. No longer active.	Bill
Oct 2020	Protect Speech Act	Jim Jordan (D-OH)	The term "otherwise objectionable" would be replaced from the list of reasons a platform can moderate content. Instead, platforms would need to comply with a list of specific types of removable content. Platforms will also be required to publish their terms of service and criteria used in content moderation practices. No longer active.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Protecting Americans from Dangerous Algorithms Act	Anna Eshoo (D-CA) Tom Malinowski (D-NJ)	Digital platforms cannot use Section 230 immunity in civil rights violations, international terrorist acts, or if the company uses an algorithm that recommends content relating to such acts. Section 230 defense may be used in these cases if platform sorts and delivers information to users in a specific way. Would only apply to platforms with 50 million or more users. No longer active.	Bill
	Stop Suppressing Speech Act	Kelly Loeffler (R-GA)	Companies that moderate content would be allowed to claim Section 230 immunity if the content constitutes harassment, illegal content, or violence and terrorism. No longer active.	Bill
	-		Facebook founder, Mark Zuckerberg, and Twitter founder, Jock Dorsey, call for changes to Section 230	
	-		In an opinion piece, the President Biden advisor suggests repealing Section 230 and developing new legislation	



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Journalism Competition and Preservation Act	John Kennedy (R-LA) Amy Klobuchar (D-MN)	Would allow small and mid-sized news organizations to negotiate and demand payment from digital platforms like Facebook and Google for linking to previews of their news content.	Press Release Bill
	CASE-IT Act (Curbing Abuse and Saving Expression in Technology)	Gregory Steube (R-FL) Kevin Hern (R-OK)	Company cannot use Section 230 as a defense for one year if it has been found to materially contribute or induce a person to materially contribute to illegal content online. No longer active.	Bill
Dec 2020	Abandoning Online Censorship Act	Louie Gohmert (R-TX)	Section 230 would be repealed. No longer active.	Bill
	Holding Sexual Predators and Online Enablers Accountable Act of 2020	Kelly Loeffler (R-GA)	Any company that wilfully or recklessly promotes or facilitates child exploitation would be stripped of Section 230 liability. No longer active.	Bill
	A bill to repeal Section 230 of the Communications Act of 1934	Lindsey Graham (R-SC)	Section 230 would be repealed. No longer active.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	A bill to amend the Internal Revenue Code of 1986 to increase the additional 2020 recovery rebates, to repeal Section 230 of the Communications Act of 1934, and for other purposes.	Mitch McConnell (R-KY)	Would increase COVID-19 stimulus checks in exchange for repealing Section 230. No longer active.	Bill
Jan 2021	Protecting Constitutional Rights From Online Platform Censorship Act	Scott DesJarlais (R-TN)	Would repeal the portion of Section 230 that allows platforms to moderate content without liability, and would make it unlawful for platforms to restrict access to content. Referred to the House Committee on Energy and Commerce	Bill
	Curbing Abuse and Saving Expression in Technology (CASE-IT) Act	Gregory Steube (R-FL)	Updated version of previous act, with an additional provision allowing users to bring a civil action against big tech companies that fail to moderate content in adherence to First Amendment principles.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			Referred to the House Committee on Energy and Commerce	
	See Something Say Something Online Act	Joe Manchin (D-WV) John Corryn (R-TX)	Updated version of previous act, materially the same. Referred to the Senate Committee on Commerce, Science, and Transportation	Bill
Feb 2021	Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms (SAFE TECH) Act (Bill S. 299)	Mark Warner (D-VA) Mazie Hirono (D-HI) Amy Klobuchar (D- MN)	Platforms would not be able to use Section 230 a) for issues arise from ads or content they have been paid to publish; b) to prevent injunctions if they have failed to restrict content that could cause irreparable harm; c) where issues in question relate to civil rights, antitrust, stalking & harassment, human rights, and wrongful death; d) Platforms would also bear the burden of proving that they are being treated as a publisher before they can avail themselves of Section 230 immunity. Announced, not yet introduced.	Bill Press release & FAQ
	Abandoning Online Censorship	Louie Gohmert (R-TX)	Updated version of previous bill. Would repeal Section 230.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			Referred to the House Committee on Energy and Commerce.	
	PROMISE Act	Mike Lee (R-UT)	Platforms would need to establish and disclose content moderation policies. Content moderation policies would be enforced by the FTC.	Bill
Mar 2021	PACT Act	Brian Schatz (D-HI) John Thune (R-SD)	Reintroduced PACT Act with some minor changes to the main provisions (eg. Increase in time requirement for content takedown). Referred to Senate Committee on Commerce, Science, and Transportation.	Bill Press release
	Stop Shielding Culpable Platforms Act	Jim Banks (R-IN)	Would amend Section 230 to allow a platform or user to be treated as the distributor of information provided by another information content provider. Referred to House Energy and Commerce Committee	Bill
	Protecting Americans from Dangerous Algo	Tom Malinowski (D-NJ) Anna Eshoo (D-CA)	Reintroduced act that modifies requirements for a platform to use Section 230 in cases of civil rights violations and	Bill Press release



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			terrorists acts, and modifies the exemptions to this rule. Referred to the House Committee on Energy and Commerce	
Apr 2021	21st Century FREE Speech Act	Bill Hagerty (R-TN)	Would repeal Section 230 and introduce a narrower liability protection that cannot be used against politically-biased censorship. It would classify big tech platforms as “common carriers”, which would impose the obligation on platforms to provide services to everyone. Big tech companies would need to disclose content moderation practices to users. Referred to the Committee on Commerce, Science, and Transportation.	Bill
May 2021	SAFE TECH Act (H.R. 3421)	A. Donald McEachin (D-VA)	Related to Bill S. 299 with the same name. Has materially the same provisions as S. 299. (See above) Referred to the House Committee on Energy and Commerce	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Online Consumer Protection Act	Jan Schakowsky (D-IL) Kathy Castor (D-FL)	Aimed at addressing the failings of Section 230 at holding online platforms accountable to consumers.	Press Release Bill
Jun 2021	Protect Speech Act	Jim Jordan (R-OH)	Platforms would not be able to benefit from Section 230 protections if it removes any content at all. To benefit, platforms would need to make public their terms of service and content moderation policies. Referred to the House Committee on Energy and Commerce	Protect Speech Act
	The Disincentivizing Internet Service Censorship of Online Users and Restrictions on Speech and Expression Act (DISCOURSE)	Marco Rubio (R-Florida)	Provides protections on conditional basis – platforms must moderate content set out by the act. Includes a religious liberties content moderation clause. Referred to the Committee on Commerce, Science, and Transportation	Bill
Jul 2021	Preserving Political Speech Online Act	Steve Daines (R-Montana)	Would remove “good faith” threshold from Section 230(c)(2) Good Samaritan content moderation provision, and instead limit reasons for moderation to obscene, illegal or violent content. Also introduces concept of “bad faith” moderation.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			Referred to the Committee on Commerce, Science, and Transportation	
	Health Misinformation Act of 2021	Amy Klobuchar (D-Minnesota)	Platforms that use algorithms to promote health misinformation cannot benefit from Section 230 protections. Referred to the Committee on Commerce, Science, and Transportation	Bill
Sept 2021	The Accountability for Online Firearms Marketplaces Act of 2021	Richard Blumenthal (D-Connecticut)	It would remove Section 230 protections for online firearms marketplaces. Referred to the Committee on Commerce, Science, and Transportation	Bill
	Federal Big Tech Tort Act	Lance Gooden (R-Texas)	Establishes a federal tort against social media platforms that cause harm to children, and would limit their ability to benefit from Section 230. Referred to the House Committee on the Judiciary	Bill
Oct 2021	A bill to repeal Section 230 of the	Lindsey Graham (R-South Carolina)	Would repeal Section 230 in its entirety.	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	Communications Act of 1934		Referred to the Senate Committee on Commerce, Science, and Transportation	
	Justice Against Malicious Algorithms Act of 2021	Frank Pallone Jr. (D-New Jersey)	<p>Platforms that are found to have known that a personalized recommendation algorithm contributed to physical or emotional injury would not benefit from Section 230 protections.</p> <p>Referred to the House Committee on Energy and Commerce</p>	Bill
Jan 2022	Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act of 2022 (Senate version)	Lindsey Graham (R-South Carolina)	<p>Identical to House version below. Would amend Section 230 so that platforms cannot use it as a defense in child sexual abuse cases. It would allow the courts to take account of a platform's use of encryption in determining liability in online child sexual offences.</p> <p>Referred to the Committee on the Judiciary</p>	Bill
Feb 2022	Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN	Sylvia Garcia (D-Texas)	<p>Identical to Senate version above.</p> <p>Referred to the Committee on Energy and Commerce, Committee on the Judiciary,</p>	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
	IT) Act of 2022 (House version)		and Committee on Education and Labor for consideration of provisions that fall within the jurisdiction of each committee	
Apr 2022	21 st Century Free Speech Act	Majorie Taylor (R-Georgia)	Related to bill of the same name introduced by Bill Hagerty (R-TN) in April 2021. It would repeal Section 230 and replace it with provisions on reasonable and non-discriminatory access to online platforms, and characterizes platforms with more than 10 million users as common carriers. Referred to the House Committee on Energy and Commerce	Bill
May 2022	The Accountability for Online Firearms Marketplaces Act of 2021	Jason Crow (D-Colorado)	Related to a similar legislation introduced by other democratic senators in September 2021 (S. 2725 – see above). Referred to the House Committee on Energy and Commerce	Bill
Jul 2022	Stop the Censorship Act	Paul Gosar (R-Arizona)	Similar to 2020 bill by the same name introduced by Gosar. Would amend Section 230 by changing what is meant by Good Samaritan moderation practices	Bill



Year	Case name / Legislation	Decided by / Introduced by	About	Link to further information
			<p>found in Section 230(c)(2). Platforms would not be able to benefit from immunity for violent or terrorist content.</p> <p>Referred to the House Committee on Energy and Commerce</p>	
Sept 2022	Preventing Rampant Online Technological Exploitation and Criminal Trafficking (PROTECT) Act of 2022	Mike Lee (R-Utah)	<p>Porn websites would be required to verify the identity and ages of their users before allowing content to be made available. This would be done through a standardized government form.</p> <p>Referred to the Senate Committee on the Judiciary</p>	Bill
	The 2023 National Defense Authorization Act Title LIX, Subtitle D: Judicial Privacy and Security	Mikie Sherrill (D-New Jersey)	<p>Businesses and individuals must not publicize personal information about federal judges or their family members online.</p> <p>Passed in House and Senate</p>	Bill