

Behind the fight over the rule that made the modern internet

October 28 2020, by Barbara Ortutay



This April 26, 2017, file photo shows the Twitter app icon on a mobile phone in Philadelphia. A tech-focused civil liberties group on Tuesday, June 2, 2020, sued to block President Donald Trump's executive order that seeks to regulate social media, saying it violates the First Amendment and chills speech. Trump's order, signed in late May, could allow more lawsuits against internet companies like Twitter and Facebook for what their users post, tweet and stream. (AP Photo/Matt Rourke, File)

Twenty-six words tucked into a 1996 law overhauling telecommunications have allowed companies like Facebook, Twitter and Google to grow into the giants they are today.

Those are the words President Donald Trump's administration has challenged directly via executive order, one that would strip those protections if online platforms engaged in "editorial decisions." The CEOs of the three internet companies face questioning Wednesday by the Senate Commerce Committee about Republican claims of anti-conservative bias.

Beyond questioning the CEOs, senators are expected to examine proposals to revise long-held legal protections for online speech, an immunity that critics in both parties say enables the companies to abdicate their responsibility to impartially moderate content.

Under the U.S. law, internet companies are generally exempt from liability for the material users post on their networks. Section 230 of the 1996 Communications Decency Act—itsself part of a broader telecom law—provides a legal "safe harbor" for internet companies.

But Trump and other politicians, including Democrats, though for different reasons than Republicans argue that Twitter, Facebook and other social media platforms have abused that protection and should lose their immunity—or at least have to earn it by satisfying requirements set by the government.

Section 230 probably can't be easily dismantled. But if it was, the internet as we know it might cease to exist.

QUESTION: Just what is Section 230?

ANSWER: If a news site falsely calls you a swindler, you can sue the

publisher for libel. But if someone posts that on Facebook, you can't sue the company—just the person who posted it.

That's thanks to Section 230, which states that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

That legal phrase shields companies that can host trillions of messages from being sued into oblivion by anyone who feels wronged by something someone else has posted—whether their complaint is legitimate or not.

The legal interpretation of section 230 also allows social platforms to moderate their services by removing posts that, for instance, are obscene or violate the services' own standards, so long as they are acting in "good faith."

QUESTION: Where did Section 230 come from?

The measure's history dates back to the 1950s, when bookstore owners were being held liable for selling books containing "obscenity," which is not protected by the First Amendment. One case eventually made it to the Supreme Court, which held that it created a "chilling effect" to hold someone liable for someone else's content.

That meant plaintiffs had to prove that bookstore owners knew they were selling obscene books, said Jeff Kosseff, the author of "The Twenty-Six Words That Created the Internet," a book about Section 230.

Fast-forward a few decades to when the commercial internet was taking off with services like CompuServe and Prodigy. Both offered online forums, but CompuServe chose not to moderate its, while Prodigy, seeking a family-friendly image, did.

CompuServe was sued over that, and the case was dismissed. Prodigy, however, got in trouble. The judge in their case ruled that "they exercised editorial control—so you're more like a newspaper than a newsstand," Kosseff said.

That didn't sit well with politicians, who worried that outcome would discourage newly forming internet companies from moderating at all. And Section 230 was born.

"Today it protects both from liability for user posts as well as liability for any claims for moderating content," Kosseff said.

QUESTION: What happens if Section 230 is limited or goes away?

ANSWER: "I don't think any of the social media companies would exist in their current forms without Section 230," Kosseff said. "They have based their business models on being large platforms for user content."

There are two possible outcomes. Platforms might get more cautious, as Craigslist did following the 2018 passage of a sex-trafficking law that carved out an exception to Section 230 for material that "promotes or facilitates prostitution." Craigslist quickly removed its "personals" section altogether, which wasn't intended to facilitate sex work. But the company didn't want to take any chances.

This outcome could actually hurt none other than the president himself, who routinely attacks private figures, entertains conspiracy theories and accuses others of crimes.

"If platforms were not immune under the law, then they would not risk the legal liability that could come with hosting Donald Trump's lies, defamation, and threats," said Kate Ruane, senior legislative counsel for the American Civil Liberties Union.

Another possibility: Facebook, Twitter and other platforms could abandon moderation altogether and let the lower common denominator prevail.

Such unmonitored services could easily end up dominated by trolls, like 8chan, which is infamous for graphic and extremist content, said Santa Clara University law professor Eric Goldman. Undoing Section 230 would be an "an existential threat to the internet," he said.

But Goldman doesn't see the White House order as that kind of threat to the internet, saying it's "political theater" that will appeal to Trump supporters. "The president can't override Congress," he said.

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Citation: Behind the fight over the rule that made the modern internet (2020, October 28) retrieved 2 March 2024 from <https://techxplore.com/news/2020-10-section-modern-internet.html>

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