

US debate on internet liability spills over to global trade deals

8 December 2019, by Rob Lever



Some US lawmakers want to limit the liability protection enjoyed by online services for content posted by others, but critics say that could devastate the open internet

US lawmakers seeking to rein in Big Tech have been stepping up efforts to limit legal immunity for online services, and now are taking that fight global.

House Speaker Nancy Pelosi this week backed a move by fellow lawmakers to carve out the so-called Section 230 protection—which some activists say is a cornerstone of the open internet—from a North American trade pact with Canada and Mexico, known as USMCA.

"There are concerns in the House about enshrining the increasingly controversial Section 230 liability shield in our [trade agreements](#), particularly at a time when Congress is considering whether changes need to be made in US law," Pelosi spokesman Henry Connelly said.

Debate on Section 230, a clause in the 1996 Communications Decency Act, has been raging for months amid rising concerns about the failure of tech platforms to curb [hate speech](#), extremist

content, [copyright infringement](#) and other abuses.

The effort to modify the law—which immunizes [online services](#) from third-party content on their sites—has drawn support from both Democrats and Republicans.

Republican Senator Josh Hawley proposed legislation earlier this year that would end the immunity unless companies submit to an "external audit" which shows they are acting in a "politically neutral" manner.

"With Section 230, tech companies get a sweetheart deal that no other industry enjoys: complete exemption from traditional publisher liability in exchange for providing a forum free of political censorship," Hawley said in introducing the legislation. "Unfortunately, and unsurprisingly, [big tech](#) has failed to hold up its end of the bargain."

'Proxy' for tech missteps

Civil liberties activists said Hawley's bill is unconstitutional and would put the government in charge of regulating speech. Other analysts point out that Section 230 has enabled the internet to thrive and that modifying it could be devastating for the internet and online speech.



Some analysts say that anger at Big Tech platforms is the reason for a push to limit their immunity, but that a stricter regulatory system could backfire

"The services that we enjoy the most exist because of Section 230," said Eric Goldman, director of the High-Tech Law Institute at Santa Clara University.

Goldman said Section 230 has become a "proxy" for the frustrations with Facebook and Google but that "American consumers would be the losers" if the law is weakened.

Corynne McSherry of the Electronic Frontier Foundation told a congressional hearing in October that Section 230 protects not only major tech platforms, but any online activity—from forwarding an email to commenting in a news forum to sharing pictures and videos of friends—from "third party liability."

McSherry said that without Section 230, tech firms such as Google, Facebook, and Twitter would not exist in their current form because they would not be able to host user content without fear of a lawsuit.

She argued that eliminating Section 230 would "cement the dominance" of these firms, because it would mean higher costs to filter and moderate content that new startups could not afford.

According to Katherine Oyama, Google's head of intellectual property policy, the internet would be a far different experience without the liability shield.

"Without Section 230, platforms could face liability for decisions around removal of content from their platforms," she told lawmakers.

"Review sites like Yelp, TripAdvisor or Angie's List might be sued for defamation claims brought by a restaurant, hotel or an electrician trying to suppress their negative reviews."

Oyama said the current law encourages sites to

filter content, but that without the legal protection they might stop all content moderation or simply block anything potentially harmful.



The deadly mosque attack in New Zealand livestreamed around the world raised concerns about the responsibility of online platforms to remove violent and abusive content

'Healthier' internet?

Danielle Citron, a Boston University law professor specializing in online speech, said Section 230 has failed to live up to its promise and that modifying it could lead to a "healthier" internet.

"Section 230's overbroad interpretation means that platforms have little legal incentive to combat online abuse," Citron told the hearing.

She said that while it has allowed some platforms to moderate content, "they also have been shielded from responsibility even when they solicit illegal activities, deliberately leave up unambiguously illegal content that causes harm, and sell dangerous products."

Citron said the law should be revised "to condition the legal shield on reasonable content moderation practices."

It remains to be seen if lawmakers will move on the law, with a solid bloc of digital rights and industry groups opposing a change.

Ed Black of the Computer and Communications Industry Association, a trade group representing many tech firms, said that inserting these provisions in a North American trade pact "is critical to ensure that the agreement is updated to reflect the needs of the internet economy."

Goldman said the inclusion of the protection makes sense for both economics and free speech.

"Section 230 is not just about free speech, it's about improving information flows in the marketplace," he said.

"It creates new opportunities for entrepreneurs to build businesses and also creates opportunities for marketplaces to be more efficient."

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