

Democratic Senators introduce new bill to remove Section 230 internet speech protections

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14 February 2021

On February 5, three Democratic Party US Senators introduced legislation called the Safeguarding Against Fraud, Exploitation, Threats, Extremism and Consumer Harms (SAFE TECH) Act, which would modify laws that provide internet companies with legal protections for content posted on their platforms by users.

In a press release accompanying the draft legislation, US Senators Mark Warner of Virginia, Mazie Hirono of Hawaii and Amy Klobuchar of Minnesota state that their proposal aims to “allow social media companies to be held accountable for enabling cyber-stalking, targeted harassment, and discrimination on their platforms.”

Senator Warner says in the press statement that the Section 230 provisions are outdated and ineffective and have enabled internet companies to “do nothing to address foreseeable, obvious and repeated misuse of their products and services to cause harm.” Warner claims that the 1996 law has “provided a ‘Get Out of Jail Free’ card” and allowed “scam artists, harassers and violent extremists to cause damage and injury” on the giant social media monopolies’ platforms.

Furthermore, Warner states the proposed bill “doesn’t interfere with free speech,” but holds the online firms “accountable for harmful, often criminal behavior enabled by their platforms to which they have turned a blind eye for too long.”

The language of Section 230 as contained in the 1996 Communications Decency Act is brief. It states, “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information speech provided by another information content provider.” This statement has functioned for twenty-five years as a legal shield for internet companies, including the social media platforms, to both moderate content that violates the law and their own community standards

without also being liable for everything that users post on their systems.

In an example of the way Section 230 works, the United States Court of Appeals for the Second Circuit in July 2019 affirmed a lower court’s decision that Facebook could not be held liable for violent attacks coordinated and encouraged by user accounts linked to Hamas, the militant Islamist group. A court majority opinion said Section 230, “should be construed broadly in favor of immunity.”

Another explanation of the law says that as long as it cannot be proven that an internet service provider is knowingly helping a user commit a crime, any illegal content posted on a platform is the responsibility of the user alone.

The key modification to Section 230 by the SAFE TECH Act proposal is that it would lift the immunity protections for service providers where payments are involved. The edits would reduce the phrase “information speech” to just “speech” and then add the following to the end of the sentence: “except to the extent the provider or user has accepted payment to make the speech available or, in whole or in part, created or funded the creation of the speech.”

Some online information experts argue that these changes are significant and would effectively destroy the speech protections that have been in place since 1996. Jeff Kosseff, a cybersecurity law professor at the US Naval Academy who authored the book *The Twenty-Six Words That Created the Internet*, told *TechCrunch*, “A good lawyer could argue that this covers many different types of arrangements that go far beyond paid advertisements. Platforms accept payments from a wide range of parties during the course of making speech ‘available’ to the public. The bill does not limit the exception to cases in

which platforms accept payments from the speaker.”

Meanwhile, Oregon Democratic Senator Ron Wyden, who is one of the original authors of Section 230, also told *TechCrunch* that, while the SAFE TECH Act draft bill may be “well-intentioned,” it would, “devastate every part of the open internet, and cause massive collateral damage to online speech.”

Wyden also said, “Creating liability for all commercial relationships would cause web hosts, cloud storage providers and even paid email services to purge their networks of any controversial speech.” Others have warned that the language of the bill would impact many other paid services from Substack and Patreon—online platforms that enable bloggers, artists, musicians, podcasters, writers and videographers to offer their exclusive content to audiences for fees—to other kinds of premium online content to web hosting.

The latest proposal from Warner, Hirono and Klobuchar is not the only legislative initiative aimed to “fix” Section 230. In June, Senators Brian Schatz (Democrat, Hawaii) and John Thune (Republican, South Dakota) introduced the Platform Accountability and Consumer Transparency (PACT) Act as a bipartisan effort to update the pivotal sentence in the 1996 law.

At the time, Schatz and Thune described their bill as strengthening “transparency in the process online platforms use to moderate content and hold those companies accountable for content that violates their own policies or is illegal.” Critics of the proposal said the PACT Act would do more harm than good and referred to the provision that internet service providers had to publish an “acceptable use policy” and also set up a call center with live human beings responding to anyone who is upset about user moderation choices as “dumb.”

Another proposal championed in July by Senators Lindsay Graham (Republican, South Carolina) and Richard Blumenthal (Democrat, Connecticut) and supported by the Senate Judiciary Committee called the Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act was widely criticized as both an attack on online speech and a stealth effort to force through back door access to strong encryption on consumer-level electronic devices and software providers by law enforcement.

According to a report in the *Wall Street Journal* on Saturday, there are 34 different legislative proposals to update Section 230 from Democrats and Republicans in the House of Representatives, the Senate and the White House. The *Journal*—which describes Section 230 as the

“foundational covenant between the government and internet platform”—makes the point that “the question of how to fix the internet with updates to Section 230 is far-reaching and complex.”

Many experts have commented on the fact the provisions of the 1996 Communications Decency Act were adopted in an era of the internet and World Wide Web when the distinction between online service providers and online content publishers was much clearer than today. The emerging contradictions over liability for illegal content as well as moderation policies express, in part, the blurring of the lines by social media platforms such as Facebook that simultaneously exhibit the attributes of both a service provider and a publisher.

The clash of these objective characteristics of social media with outdated and inadequate legal framework are further exacerbated by the conflict between the private ownership and management of the online platforms for profit and the national base of this property relationship with the mass daily content creation and consumption activity of billions of people across the entire globe.

While many of the proposals to update the US law focus on “harassment,” “intimidation” and “cyber-stalking,” a far more important consideration for the Democrats and Republicans is making changes that will rein in and control online content, especially to prevent the development of anti-capitalist and socialist political ideas from going viral on the platforms.

It is no accident that the stepped-up drive to overturn the Section 230 immunity provisions is taking place amid the general breakdown of democratic forms of rule and the growth of fascist political movements within the US and around the world. These are both a response of the ruling establishment to the emerging struggle of the working class against global capitalism.



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