



# WHAT THEY'RE SAYING:

*The Importance of Protecting Section 230 of the Communications Decency Act*

## BUSINESS & TECHNOLOGY INDUSTRY ASSOCIATIONS

**Engine:** “Efforts to roll back the critical protections for websites in Section 230 of the Communications Decency Act are gravely concerning to the startup community. More than virtually any other piece of legislation, Section 230 is directly responsible for facilitating the development of the Internet ecosystem we have today, and attempts to narrow its protections—however well-intentioned—would put the economic, cultural, and educational value of the Internet at risk.” (Engine, 8/1/17)

**Internet Association:** “By creating new carve-outs to CDA230, this language will have the unintended consequence of allowing opportunistic trial lawyers to bring a deluge of frivolous litigation targeting legitimate, law-abiding intermediaries and create the potential for unpredictable, inconsistent enforcement by state authorities for political or monetary gain.” (Letter to Senators Portman & Blumenthal, 8/2/17)

**U.S. Chamber of Commerce, BSA | The Software Alliance, TechNet & others:** “Section 230 of the Communications Decency Act (CDA 230) has proven central to maintaining a legal environment that fosters the innovative work of our member companies, allowing them to thrive and serve legitimate consumers without becoming stymied by liability for user actions outside of their control.” (Letter to Senators Portman & Blumenthal, 8/9/17)

**Computer & Communications Industry Association:** “Undermining critical legal protections for lawful internet services will not help in the fight against illegal activity online. Instead of stamping out rogue activity, this will discourage online services from developing strategies to fight criminal activity online.” (CCIA, 8/1/17)

**Consumer Technology Association:** “Without the protections of Section 230 internet platforms would be legally liable for all user content and forced to engage in resource-intensive review and self-censorship, while losing protection for their own voluntary initiatives to inspect posted content. As an association that represents primarily small businesses, we are aware that these burdens will fall most heavily on startups and entrepreneurs.” (Letter to Senators Portman & Blumenthal, 8/2/17)

**NetChoice:** “Sex trafficking rings commit awful crimes that impose a massive toll. We need to find and prosecute them—which is why we fully support the existing law—Section 230—that allows for the U.S. Department of Justice to find, apprehend, and prosecute online sex and human trafficking rings. The DOJ already has all the power and permission it needs to prosecute trafficking sites and other bad actors like Backpage.” (NetChoice, 8/2017)

## FREE SPEECH & DIGITAL RIGHTS ADVOCATES

**American Civil Liberties Union, Center for Democracy & Technology, New America’s Open Technology Institute & others:** “In the United States, Section 230 of the Communications Act has proven as important as the First Amendment in supporting freedom of speech online. Section 230’s comprehensive protections against liability under state law and federal civil statutes ensure that online intermediaries can host a diverse array of information, ideas, and opinions without facing the chilling effect of potential litigation.” (Letter to Senators McConnell & Schumer, 8/4/17)

**Copia Institute:** “Expanding potential liability and opening up the possibility of civil lawsuits against technology platforms will also encourage a barrage of frivolous litigation targeting platforms, as well as fishing expeditions searching for any evidence that might be used against them. For two decades, we’ve seen time and time again how perfectly legitimate online platforms have been targeted by vexatious and frivolous lawsuits. Section 230 has been an important wall of protection against such mistargeted legal action.” (Letter to Senators Portman & Blumenthal, 8/2017)

**Electronic Frontier Foundation:** “Without the protections in Section 230, a single lawsuit over the actions of one of its users could have destroyed one of those companies in its early stages. Compromising Section 230 would be catastrophic for high-growth startups.” (EFF, 8/2/17)

**R Street Institute, Heritage Action, Campaign for Liberty & others:** “Moreover, Section 230 allows online platforms to engage in Good Samaritan blocking and filtering of user content without risking civil liability for something that someone else said or wrote. Without these protections, online platforms as small as a personal blog or as big as Wikipedia would face a flood of frivolous lawsuits and potentially devastating filtering costs. It is no exaggeration to say that Section 230 is the law that made today’s Internet possible.” (Letter to Senators McConnell & Schumer, 8/3/17)

**TechFreedom:** “Section 230 is the law that made today’s Internet possible. Given the stakes, any legislation should be grounded in a full and public examination of how Section 230 works today...As we note, Section 230 already excludes all federal criminal laws, so the fact that Backpage has not yet been federally prosecuted has nothing to do with Section 230, and no amendment to the law will accelerate federal prosecution.” (Letter to Senators McConnell & Schumer, 9/11/17)

## **POLICY & LEGAL EXPERTS**

**Evan Engstrom, Executive Director, Engine:** “Without this provision, commonly known as Section 230, running a site like Facebook or Yelp — or trying to create the next Facebook or Yelp — would be effectively impossible, because any time a user said something legally questionable, the website would be on the hook for potentially ruinous liability.” (*Sun-Sentinel*, 9/12/17)

**Emma Llanso, Director of the Free Expression Project, Center For Democracy & Technology:** “Without Section 230’s protections, intermediaries would face strong incentives to block, filter, or take down speech that is questionable or controversial, rather than risk potential fines or criminal penalties. Laws that hold intermediaries legally responsible for content authored by their users create pressures for those intermediaries to more aggressively monitor their users and act as gatekeepers of their speech.” (CDT, 8/1/17)

**Jim Harper, Vice President, Competitive Enterprise Institute:** “But it would be profoundly concerning and regrettable for all of us fully law-abiding Internet users if the effort to stop Backpage were to undercut the sound principle that online intermediaries hosting or republishing others’ speech are not legally responsible for what those others say and do.” (CEI, 7/31/17)

**Wayne T. Brough, Chief Economist, FreedomWorks:** “Imagine a world where Yahoo, Google, or Facebook were liable for any violations or infringements that users post on their services...The internet that emerged would be nowhere near as free-wheeling and open as the internet we have today. Fearful of legal repercussions, every online service provider and online forum would be forced to monitor the communications of its users. Even an errant reply comment could trigger legal action. The administrative costs of monitoring this system would soon be prohibitive, and the effect on free speech chilling.” (*American Spectator*, 8/8/17)

**Barbary Brunner, CEO, Austin Technology Council:** “[Section 230] establishes a careful balancing act between technology companies and their users. In exchange for self-policing for illegal activity on their platforms and websites, technology companies can’t be held responsible for users’ crimes...[Weakening Section 230] could leave those tech companies fighting against sex trafficking open to liability or prosecution, simply for having knowledge of potential crimes — knowledge that they currently pass on to law enforcement.” (*Austin American-Statesman*, 8/31/17)

**Jesse Blumenthal, Charles Koch Institute:** “If we make large tech firms our country’s policemen we will chill the greatest tool humanity has ever created for free speech. If they face liability for the actions of users they cannot fully control, why would Google, Facebook, Yelp, Reddit, or any other platform not take down constitutionally protected but unpopular or edgy speech on the remote chance that it could lead to ruinous liability?” (*The Hill*, 8/3/17)

**Sophia Cope, Staff Attorney, Electronic Frontier Foundation:** “All intermediaries, not just Backpage, but all intermediaries—including websites, web hosts, social media platforms, ISPs—that arguably fit within the definition of Section 230 would be exposed to state criminal prosecution for the content that their users post. That’s 50 different state laws that all of these intermediaries would now be exposed to, and then civil claims as well.” (*Morning Consult*, 8/25/17)

**Mike Godwin, Senior Fellow, R Street Institute:** “To draw an analogy, the bill would be as if Congress decided that FedEx was legally liable for anything illegal it ever carries, even where it’s ignorant of the infraction and acts in good faith. That would be a crazy notion in itself, but rather than applying only to FedEx’s tech equivalents—the giants like Google and Facebook—it also would apply to smaller, less well-moneyed services like Wikipedia. Even if the larger internet companies can bear the burden of defending against a vastly increased number of prosecutions and lawsuits—and that’s by no means certain—it would be fatal for smaller companies and startups.” (*Slate*, 8/4/17)

**Daphne Keller, Director of Intermediary Liability, Stanford Law School Center for Internet and Society:**

“[Weakening Section 230] opens doors to an unforeseeable array of claims, against an unforeseeable array of defendants. Big platforms may have the resources to fight these claims, small ones likely will not.” (Stanford Law School, 8/11/17)

**Matt Schruers, Vice President for Law & Policy, Computer & Communications Industry Association:**

“If every action by Internet industry employees dedicated to safety and content moderation could lead to criminal exposure, or provide leverage for a vexatious litigant, we’re likely to see smaller services exit the market. Larger services may engage in mass removal of lawful content. Internet speakers who cannot promise to indemnify intermediaries would be pushed offline, marginalizing voices to whom the Internet has provided a platform.” (Project DisCo, 8/3/17)

**Ryan Hagemann, Director of Technology Policy, Niskanen Center:** “Twenty years ago, a number of decisions were made that paved the way for the explosive growth of digital commerce and online content creation... the passage of Section 230 marks an important foundation upon which our modern digital society is built. It’s one of the laws that makes the internet work. Gutting Section 230 of limited liability protections won’t help combat sex trafficking. Meanwhile, the overwhelming majority of internet users would suffer the costs.” (*The Hill*, 8/7/17)

**Daniel Castro, Vice President, Information Technology and Innovation Foundation:** “Section 230 is one of the most important U.S. laws for the internet economy, and Congress should avoid weakening it. Instead, it should focus on equipping the Department of Justice with all the resources it needs to investigate and prosecute those who attempt to profit from exploitation and trafficking.” (*The Hill*, 8/6/17)

**Jonathon Hauenschild, Director of the Task Force on Communications and Technology, American Legislative Exchange Council:**

“The legislative process takes time—time children victimized through the sex trade do not have. No one wants to delay law enforcement investigation and prosecution of those responsible for such heinous crimes. Such crimes should be investigated immediately, using tools that exist today. Thus, the question is not whether new tools are needed, but why the Department of Justice has not used all the tools at its disposal.” (*The Hill*, 8/8/17)

## ACADEMICS

**Professor Eric Goldman, Santa Clara University School of Law:** “As usual, Section 230’s real benefit comes from leveling the playing field for new industry entrants; so as the costs of entry go up, we see less entry. What does that mean for the emergence of new socially beneficial services to supplement or replace the existing incumbents? We also would expect more ‘collateral damage’ from any proactive steps taken by service providers, i.e. removal or moderation of completely legal content in the effort to mitigate risk of liability.” (Eric Goldman Blog, 7/31/17)

**Professor Jonathan Zittrain, Harvard Law School:** “It would be good for the drafters of the bill to engage seriously with the non-trivial objections that are meant to support freedom of expression online, and it’s not freedom of expression to sex traffic. [Section 230 supporters] are worried about sites that don’t resemble Backpage at all running into trouble if the immunity is lifted.” (*New York Times*, 8/2/17)

## ELECTED OFFICIALS

**Rep. Ro Khanna (CA):** “I think we want to encourage tech companies to make sure they don’t have things on their platforms that are inciting violence or that are inciting hate speech, but I am hesitant to have the government come in and act as a censor by imposing liability. I don’t support the government dictating that because that’s going to stifle freedom of expression and speech.” (*Politico*, 8/24/17)

**Senator Ron Wyden (OR):** “Section 230 of the Communications Decency Act is widely viewed as the legal basis for all of social media and it has been vital to the expansion of affordable internet access throughout the country. It is yet another example of the technical ignorance of Congress threatening the jobs, lives and economic opportunities of millions of Americans” (Senator Ron Wyden Press Release, 8/1/17)