

Is Social Media Immunity at Risk of Being Revoked?

Section 230 has been one of the most influential pieces of legislation in shaping the internet as we know it today, but it has recently come under intense scrutiny.¹ First, to describe what § 230 is, § 230 was enacted in 1996, and it protects companies from facing liability for user generated content and for their good faith efforts to remove objectionable content.² Without it, companies like Facebook and Twitter could face liability for illegal things that users post or tweet.³ Additionally, it allows Facebook and Twitter to remove content, such as pornographic material or hate speech, without facing the risk of a first amendment claim.⁴ A large part of the scrutiny § 230 faces comes from its association with big technology companies (Big Tech).⁵ Ted Cruz has described it as a subsidy to Big Tech, and Nancy Pelosi has described it as a gift to Big Tech.⁶ What's interesting is that despite this bipartisan disdain of § 230, each side has a distinct rationale.⁷ Republicans believe that Big Tech is failing to follow the spirit of the rule with select enforcement against conservatives, while Democrats believe Big Tech is using it as a shield for their reluctance to remove problematic content.⁸

While there is support from each party in amending § 230, the Republicans seem to be much more motivated. This can be most clearly seen by President Trump's signing of an executive order directing regulator action towards § 230 on May 28, 2020.⁹ Further, on September 23, 2020, the Department of Justice sent draft legislation to Congress amending § 230 on behalf of the Trump Administration.¹⁰ Republican Senators have also introduced many bills to limit the protection § 230 offers. Senator Josh Hawley has introduced the Limiting Section 230 Immunity to Good Samaritans Act bill in the Senate on June 17, 2020.¹¹ This bill sought to clarify and rein in the good faith standard, prohibiting immunity for companies that failed to meet this standard.¹² Republican Senators Lindsey Graham, Roger Wicker and Marsha Blackburn introduced the Online Freedom and Viewpoint Diversity Act on September 8, 2020.¹³ This bill changes how to determine what is objectionable from a subjective standard that looks specifically from the view of the company or user to an objective standard the courts get to determine.¹⁴ It also seeks to clarify what content is objectionable and who is considered an information content provider who can be held liable.¹⁵

¹ See <https://www.usatoday.com/story/tech/2020/10/15/trump-section-230-facebook-twitter-google-conservative-bias/3670858001/>

² 47 USC § 230(c)

³ See *Id.*

⁴ See *Id.*

⁵ <https://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>

¹⁰ <https://www.justice.gov/opa/pr/justice-department-unveils-proposed-section-230-legislation>

¹¹ <https://www.cnbc.com/2020/06/17/gop-sen-hawley-unveils-latest-attack-on-techs-liability-shield.html>

¹² <https://www.rubio.senate.gov/public/index.cfm/2020/6/rubio-hawley-announce-bill-empowering-americans-to-hold-big-tech-companies-accountable-for-acting-in-bad-faith#:~:text=The%20Limiting%20Section%20230%20Immunity,if%20they%20violate%20those%20terms.>

¹³ <https://www.commerce.senate.gov/2020/9/wicker-graham-blackburn-introduce-bill-to-modify-section-230-and-empower-consumers-online>

¹⁴ *Id.*

¹⁵ *Id.*

Lastly, despite their different rationales, representatives from each party have been able to come together to introduce bipartisan bills. The most notable bipartisan legislation is the Platform Accountability and Consumer Transparency (PACT) Act.¹⁶ The goal of the PACT Act is to increase transparency around the moderation process.¹⁷ It would require companies to submit reports to the Federal Trade Commission regarding what content has been censored.¹⁸ It would also require companies to explain their decisions and create an appeals process.¹⁹

Section 230 has been so influential in making the internet what it is today that congress should be wary of making drastic changes. However, since both sides of the aisle want change, it seems probable that this will be amended.

-- *Steven Heinrich*

Section 230 is an act that provides legal immunity to internet companies for user generated content. It is currently viewed by both parties in need of reform.

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¹⁶ <https://www.thune.senate.gov/public/index.cfm/2020/7/thune-pact-act-would-increase-internet-accountability-and-consumer-transparency>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*