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HOW TO PROTECT FREE EXPRESSION ONLINE



Section 230 Principles to Protect Free Expression Online

Section 230 is important for supporting free expression online. We have developed principles to help guide discussions of possible Section 230 reform to ensure that any changes are designed to promote the public interest. These principles are meant to provide guardrails for policymakers to make certain that platforms are able to facilitate free expression.

Content moderation is not neutral. By definition, moderating content requires you to choose what is allowed and what is not allowed. As with mainstream broadcast and legacy media, social media platform companies decide what is allowed to be posted on their sites and users decide what content they do or don't consume on these platforms. By and large, the government does not decide who can or cannot speak on those platforms, in accordance with the First Amendment. The difference with social media, as compared to legacy and broadcast media, is that social media is interactive and boasts limitless "channels." This structure promotes greater opportunity for free expression by all voices, including the most marginalized ones, and encourages a variety of platform options in the marketplace, enabling a user to choose what platform to interact on.

As some online platforms become dominant through various means and the cost of being excluded from a dominant platform becomes high for a user, the stakes for content moderation are raised. It is fair to demand due process, transparency, and consistency of treatment by a platform in its content moderation practices. At the same time, free expression is harmed, not helped, by proposals that seek to limit the content moderation choices of major platforms, because enabling free speech, at times, requires fostering an environment where all voices can be heard, and hateful, abusive, misleading, and other speech does not drive users away. Ultimately, it is the internet as a whole, not any single private platform, that must provide a "forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. § 230.

One solution to the problem of content moderation must therefore lie in competition policy, and creating the opportunity for diverse platforms to exist, with different policies catering to different audiences. Other solutions can involve user empowerment, not just to switch platforms, but in terms of giving users more control of the content they are exposed to. Regulation and scrutiny of dominant platforms remains essential, of course. One example of such regulation could be [oversight and auditing of algorithms](#) that drive people to specific content. Regulation of platforms must be consistent with free speech principles, both in terms of allowing platforms editorial discretion, and recognizing that moderation and curation serves the broader goal of free expression.

Many policymakers are considering changes to Section 230 of the Communications Act to ensure that online platforms act in a way that promotes the public interest. Public Knowledge

believes that Section 230 remains essential to facilitating user expression and permitting platforms to decide what user content to amplify, and what content to moderate. For this reason, it should not be simply repealed and lawmakers should be very cautious in their approach to reform. Section 230 was never intended to shield particular businesses or business models from appropriate regulation. Should Congress seek to reform Section 230, Public Knowledge urges lawmakers to consider the following principles in any discussion around content moderation legislation and Section 230 reform.

1. **Clear Due Process and Transparency:** Section 230 reform should not allow platforms to have opaque or unclear processes for moderating user content. Users should have a clear idea about what content *is* or *is not* allowed on the platform; why their content was taken down; and how to avail themselves of a transparent and equitable appeals process with the platform. Transparency doesn't just mean written policies but how those policies are enforced because equitable and clear enforcement of these policies may help avoid what has been the disparate treatment of marginalized voices on platforms. In addition, more platforms could release transparency reports and platforms could make their data available subject to appropriate privacy protections for academic and government research (not competitors) to help promote greater transparency in their decision-making. Editorial and content decisions will always have grey areas, and different people and different platforms will come to different decisions with regard to identical content. Due process and transparency do not replace editorial discretion or "good faith" content moderation choices.
2. **Protecting the Voices of Marginalized Communities:** For many Black, Latinx, Asian, religious minorities, and LGBTQ+ people, especially *women across every socioeconomic and racial demographic*, articulating one's voice online is opening one's self to harassment. This kind of harassment leads to the voices of these people being further marginalized and, in many cases, less likely to engage in the kind of speech that Section 230 was meant to protect in the first place. Any Section 230 reform must consider the effect it could have on the voices of marginalized communities. Ensuring that platforms have the ability to continue to protect these voices from being harassed or bullied and that they have the ability to conduct equitable enforcement of content moderation must be preserved.
3. **Streamlined Content Moderation Process:** Content moderation processes should be clear and concise and should not involve an overly legal process for content moderation decisions. The process should be in plain language to allow users to clearly understand what is going on. While platforms are allowed to make their own content moderation decisions, how those decisions are made should be accessible to all users.
4. **One Size Does Not Fit All:** Some proponents of Section 230 repeal or reform allege that the law is outdated. It is not. Section 230 remains a foundational law that allows for innovators and entrepreneurs to develop opportunities for community building through user-generated content and to bring those opportunities to market. Outright repeal would

exacerbate the very thing we need most to challenge the dominance of the largest platforms -- new market entrants. One way to ensure we continue to encourage market entry and promote smaller platforms that offer niche content to their communities would be to limit the reforms to 230 to larger platforms or by providing some accommodation for smaller platforms.

5. **Section 230 and Business Activity:** Section 230 does not protect business activities from sensible business regulation, including business activities that stem from user-generated content in some way. Most judges have reached this conclusion already but it is an area to be aware of that may require legislative clarification. Thus, Section 230 does not shield Amazon for selling defective products when it stocks and ships them. It does not limit the ability of localities to regulate Airbnb to fight housing discrimination, or to regulate Uber to protect consumers. It does not mean that platforms can escape [COPPA liability](#) for user-posted content.
6. **Pay to Play:** Section 230 was designed to protect user speech, not advertising-based business models. Platforms do not need to be shielded by Section 230 for content they have accepted payment to publish. When there is an identifiable business relationship, standard duties of care could apply. Such an approach has the advantage of maintaining the clarity that Section 230 now has, as ads are typically already clearly delineated from normal user posts. Additionally, exempting ads from Section 230 should incentivize platforms to take a firmer hand against the scams, fraud, and civil rights violations that are currently facilitated via ads, while providing the victims of these uses the ability to have redress in the courts.
7. **Conduct, Not Content:** Section 230 reforms should be focused on conduct, not content. Section 230 has allowed platforms to give voice to so many different political issues and movements, like the Black Lives Matter, Christian Coalition, Arab Spring, and #MeToo movements. Focusing on conduct allows future world-changing content to flourish but makes sure that platforms adhere to certain guidelines. This content-neutral approach allows reform to Section 230 to withstand First Amendment scrutiny.
8. **Promote User Choices:** Editorial discretion is appropriately within the purview of platforms as they created these digital spaces to offer users a place to connect and share views that are within the parameters of the content they wish to offer their users. Even when content moderation choices are made, some users will disagree with the final decision. Policymakers can empower users to move to other platform options or create new platform options by requiring [interoperability](#) of platforms. This would reduce barriers to data flows, promoting user choice online as well as a user's ability to speak on alternative platforms.
9. **Establish That Any Section 230 Reforms Meant To Address Alleged Harms Actually Have the Ability To Do So:** Some reform proposals seek to revoke Section 230 liability protections for platforms without adequately establishing that doing so

addresses the very harm lawmakers are trying to prevent. Section 230 should not be viewed as some sort of reward or benefit that platforms receive in exchange for engaging in “good behavior” in other ways. Lawmakers should address the root of the problem and not merely view every problem as a Section 230 problem.

