WHITE PAPER

UPDATING THE INTERNET

Restoring the Vision of Section 230 | Abridged Version

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UPDATING SECTION 230

Updating Section 230 requires a surgical realignment of Congress's original intent to shield the Good Samaritans, while avoiding the "moderator's dilemma," in which platforms must choose between doing nothing or assuming full liability.

To be clear, Section 230(c)(1) and Section 230(c)(2) serve distinct purposes, and any reform must reflect that distinction. On one hand, Section 230(c)(1) protects platforms from being treated as the publisher of third-party content — but it was never meant to be an immunity shield. On the other hand, Section 230(c)(2), the Good Samaritan provision, protects platforms that remove or restrict harmful content in good faith. Preserving (c)(2) is critical to ensure companies can continue moderating responsibly while safeguarding First Amendment rights.

This proposal outlines four targeted clarifications designed to hold companies accountable for their own design choices, without undermining the original protections for good-faith moderation.

- **Part I: Update Section 230 to reflect a forward-looking vision of the internet** — Remove the statutory assumption that a "vibrant and competitive free market" currently exists for interactive computer services, and reframes competition as a policy objective rather than a factual premise.
- **Part II: Clarify the distinction between speech and conduct** — Clarify that Section 230(c)(1) applies to protected user speech, not all "information," allowing courts to determine whether the alleged harm arises from expressive or non-expressive activity, such as design choices that are independent of what users say.
- **Part III: Allow for distributor liability** — Allow courts to apply traditional distributor liability that has been previously foreclosed by cases such as *Zeran v. America Online, Inc.*, by clarifying that courts may evaluate whether platforms knew or should have known about unlawful third-party activity they facilitated and failed to address. In such cases, platforms should not be shielded by Section 230 immunity.
- **Part IV: Limit immunity for platform design and features** — Affirm that Section 230(c)(1) does not apply to platform design, ensuring accountability for product choices that amplify, recommend, or otherwise shape potentially illegal or tortious activity.

Redlined Reforms for Section 230(b)(2) and (c)(1) of the Communications Decency Act

(b) POLICY
It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to ~~preserve the~~ encourage a vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) PROTECTIONS FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL

(1) TREATMENT OF PUBLISHER OR SPEAKER
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, but can be treated as a distributor of such speech. The provisions of this section do not apply to the design of interactive computer services.

(2) CIVIL LIABILITY
No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

Part I: Update Section 230 to reflect a forward-looking vision of the internet

§ 230 (b)(2) POLICY
"to ~~preserve the~~ encourage a vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;"

Summary of Changes: Replace "preserve" with "encourage," and delete the phrases "that presently exists" and "unfettered by Federal or State regulation."

When Section 230 was enacted, the internet was marked by open competition, low barriers to entry, and rapid innovation driven by entrepreneurs and small businesses. In that environment, Congress's goal of preserving a "vibrant and competitive free market" made sense. Thirty years later, however, the market Section 230 assumed no longer exists.

Today, a small number of dominant digital firms exercise outsized control over personal data, distribution, and access to users. These companies have built self-reinforcing systems that draw users in — particularly children and teens — extract vast amounts of data, and use it to optimize addictive design, entrench market power, and exclude competitors.[1]

Updating Section 230(b)(2) by shifting from "preserve" to "encourage" a competitive free market better reflects this reality. Courts rely on Congress's stated purposes when interpreting the statute, and language that assumes competition already exists obscures Congress's original aim: to foster innovation, expand opportunity, and strengthen U.S. leadership in global markets. As applied today, Section 230 has too often produced the opposite outcome.

Part II: Clarify the distinction between speech and conduct

§ 230 (c)(1) TREATMENT OF PUBLISHER OR SPEAKER
"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..."

Summary of Changes: Replace "any information" with "speech."

Replacing "information" with "speech" in Section 230(c)(1) would realign the statute with Congress's original intent to protect good Samaritans — while restoring accountability for platforms' own conduct. Rather than reflexively invoking Section 230 to dismiss lawsuits at the outset, companies would be required to show that the activity at issue is protected speech and that it would treat them as a publisher.

Importantly, Courts have long distinguished between expressive activity, which may be protected, and non-expressive activity, which generally is not. In cases such as *Tinker v. Des Moines* and *United States v. O'Brien,* the Supreme Court engaged in careful, element-

1. U.S. House of Representatives Antitrust Subcommittee, *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*, October 2020. wsj.net/public/resources/documents/House%20Antitrust%20Panel%20Tech%20Probe%20Report%2010.6.20.pdf.

by-element analysis to determine whether conduct was sufficiently expressive to warrant constitutional protection. In *Tinker*, wearing black armbands to protest the Vietnam War was deemed expressive conduct and therefore protected.[2] In *O'Brien*, by contrast, the Court held that burning draft cards involved both expressive and non-expressive elements, and that the non-expressive conduct could be regulated.[3]

That analysis can't happen in the digital world because Section 230 has been interpreted to immunize all "information" at the threshold, which has included virtually everything online including design choices like algorithms, infinite scroll, push notifications, and more. This immunity applies before courts ever ask whether a claim concerns speech or conduct, even when plaintiffs challenge design choices such as algorithmic amplification, geolocation matching, or manipulative "dark" patterns. Section 230 has effectively short-circuited the judicial process by preventing courts from building a healthy jurisprudence about the distinction between speech and conduct online, or between negligence and responsible stewardship.

This dynamic was illustrated clearly in 2015 with *Doe v. Grindr*. In the lawsuit, a 15-year-old boy was raped by four men he met through the app. The complaint alleged that Grindr deliberately targeted youth on teen-oriented platforms, designed a location-based matching system that paired minors with nearby adults, and failed to implement basic safeguards despite knowing that children were using the service.[4] The court, however, dismissed the case under Section 230, barring even limited discovery into what the company knew and how its product design contributed to the harm.[5]

In other industries, defendants must demonstrate that their decisions warrant First Amendment protection. Social media, by contrast, are often shielded from that scrutiny altogether. If Section 230(c)(1) was revised to change "information" to "speech," courts in cases like *Doe v. Grindr* would have been required to ask a basic but critical question: **did the alleged harm arise from expressive content or from non-expressive product design?** Platforms would then bear the burden of showing that specific features — such as matching algorithms, disappearing messages, or recommendation systems — serve an expressive purpose usually entitled to First Amendment protection.

Part III: Allow for distributor liability

§ 230 (c)(1) TREATMENT OF PUBLISHER OR SPEAKER
"No provider or user of an interactive computer service shall be treated as the publisher or speaker of *speech* provided by another information content provider, but can be treated as a distributor of such speech..."

Summary of Changes: Add language stating: "but can be treated as a distributor of such speech."

Section 230(c)(1) borrows established terms of art such as publisher, speaker, and distributor from defamation law. Under that framework, distributors may be held liable when they have actual or constructive knowledge of unlawful content and fail to take reasonable steps to

2. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).
3. United States v. O'Brien, 391 U.S. 367 (1968).
4. "Doe v. Grindr," Electronic Privacy Information Center. epic.org/documents/doe-v-grindr.
5. Doe v. Grindr LLC, 709 F. Supp. 3d 1047 (C.D. Cal. 2023).

address it.[6] This proposal restores that baseline principle. It clarifies that, like every other industry — from automobiles to pharmaceuticals — technology companies are not immune when they know or should have known about foreseeable harm, or when they willfully avoid learning about it.

In 1997, the Fourth Circuit's decision in *Zeran v. America Online, Inc.* interpreted Section 230(c)(1) to foreclose distributor liability. The court reasoned that claims based on a platform's knowledge of illegal or tortious activity were preempted because "distributor liability... is merely a species or type of liability for publishing defamatory material."[7] In the court's view, "*Zeran's* attempt to impose distributor liability on AOL [was], in effect, an attempt to have AOL treated as the publisher...," and was therefore barred by Section 230. On that basis, the court concluded that Section 230 "plainly immunizes computer service providers like AOL from liability for information that originates with third parties."[8] *Zeran* was among the first decisions to characterize Section 230 as providing a sweeping immunity shield and set off a series of judicial decisions that would continue to distort Congress' original intent.

Section 230 was enacted in response to *Stratton Oakmont v. Prodigy Services Co.* and was intended to solve the "moderator's dilemma" by encouraging online service providers to remove harmful content without risking publisher liability simply for attempting to moderate their platforms. But by interpreting Section 230(c)(1) as conferring sweeping immunity — even when companies had knowledge of unlawful content — *Zeran* removed a key legal incentive for companies to address harmful material. As a result, the ruling signaled that companies could remain immune from liability even after learning about unlawful content, leaving them with little reason to monitor their services or respond meaningfully to complaints.

Adding clarifying language would restore Congress's original intent to protect and encourage good Samaritan moderation while allowing courts to consider whether companies had actual or constructive knowledge of illegal or tortious activity. The revision would make clear that Section 230(c)(1) does not foreclose traditional distributor liability. In practice, this would simply return fact-based questions — such as what a platform knew and how it responded — to the courts, where they can be evaluated on a case-by-case basis.

In the rare examples that cases have been able to advance, discovery has consistently shown that companies often do have that knowledge. Internal research, moderation records, and enforcement conversations have revealed that companies were aware their services were being used to sell illegal drugs, traffic firearms, facilitate sexual exploitation, or recruit victims for fraud — and yet failed to responsibly address the harms.[9] In the physical world, newspapers, are not liable for every classified ad they publish, but once they know they are running ads for illegal pills, weapons, or human trafficking, they face legal exposure if they continue. Social media companies are engaged in the same act of distribution, but Section 230 has uniquely shielded them from the consequences of knowledge.

By restoring *the option* to apply distributor liability, Congress can return this analysis back to the courts. Judges could assess knowledge, reasonableness, and responsibility based on evidence, considering a platform's size, resources, and conduct. The proposed change does not

6. *Restatement (Second) of Torts § 558.*
7. Zeran v. America Online, Inc., 958 F. Supp. 1124, 1124 (E.D. Va. 1997)
8. *Id.*
9. Charlotte Atler, "Court Filings Allege Meta Downplayed Risks to Children and Misled the Public," *Time*, November 22, 2025. time.com/7336204/meta-lawsuit-files-child-safety.

attempt to answer these questions in advance; it simply ensures that courts can answer the fundamental question Section 230 currently halts: whether the defendant is legally responsible for the harm alleged.

Part IV: Limit immunity for platform design and features

§ 230 (c)(1) TREATMENT OF PUBLISHER OR SPEAKER
"No provider or user of an interactive computer service shall be treated as the publisher or speaker of *speech* provided by another information content provider*, but can be treated as a distributor of such speech.* The provisions of this section do not apply to the design of interactive computer services."

Summary of Changes: Add language stating: "The provisions of this section do not apply to the design of interactive computer services."

The revised language makes clear that companies are not immune from lawsuits when the harm at issue comes from design choices. In other words, Section 230 should not shield companies when injuries are caused by how a service is built or operates. That includes features such as content filters, randomized chat or matching tools, the targeted delivery of dangerous content to children, or engagement-driven mechanics like infinite scroll and autoplay. This point overlaps with themes discussed throughout this paper, but it bears repeating plainly because the distinction is legally critical and courts have repeatedly blurred it.

While some courts are beginning to move in this direction, clarity is needed from Congress (and has been directly requested by the Supreme Court in *Gonzalez v. Google*) to keep pace with technological innovation.[10] Absent clear guidance, social companies continue to argue that virtually every new product decision is inseparable from third-party content.

To be sure, some courts have suggested that certain design features, such as recommendation systems, can involve expression. But in practice, the largest social media platforms deploy features like "For You" feeds primarily to maximize time spent on the platform, not to convey ideas or viewpoints. That distinction matters. Increasingly, courts recognize that many of these features function as product design, not speech. For example, in the California social media judicial council coordinated proceeding in Los Angeles County, the Central District agreed with the plaintiff in the first bellwether case that claims around product design are able to survive Section 230.[11]

The reference to "design" in this proposal is intentional. It reflects a category of ordinary conduct — similar to how cars, toys, or consumer products are designed — that has long been subject to basic safety rules and liability standards. This clarification is necessary because companies routinely invoke Section 230 at the very earliest stage of a lawsuit, even when claims have nothing to do with third-party speech. As a result, families are often blocked from accessing discovery or presenting evidence about how a product actually works.

10. Gonzalez v. Google LLC, 598 U. S. 617 (2023).
11. JCCP 5255, Cal. Super. Ct. (July 19, 2024).

THE TAKEAWAY

Taken together, the proposed update points to a single, unifying principle: **Section 230 immunity should be earned, not automatic.** Today, companies receive sweeping protection often before courts are able to ask even the most basic questions about what conduct is at issue, who caused the harm, or whether the First Amendment is implicated at all. The result is that courts are prevented from developing coherent doctrine, families are denied access to evidence, and lawmakers are left legislating in the dark.

Each substantive change proposed in this paper works together to protect what is good about Section 230 and improve what is broken.

- Updating Section 230's policy goals recognizes that the market Congress assumed in 1996 no longer exists.
- Clarifying the distinction between speech and conduct ensures that constitutional protections apply where they belong — without swallowing all product design into the category of protected expression.
- Restoring distributor liability reaffirms that knowledge matters, and that courts should have the option to evaluate whether companies had knowledge of illegal or tortious activity.
- Limiting immunity for platform design simply confirms what has long been true in every other industry: companies are responsible for how their products work.

Critically, this reform does not attempt to pre-determine judicial outcomes. Social media companies would not automatically lose cases, nor would courts suddenly second-guess every moderation decision. Instead, companies would bear the burden of showing that the immunity they claim actually applies; that the conduct at issue involves protected user speech, not the company's own design, amplification, or distribution choices.

Preserving free expression and encouraging innovation do not require blanket immunity. They require clear rules, fair process, and accountability when harm is foreseeable and preventable. By clarifying Section 230's scope rather than abandoning it, Congress can ensure that the internet's legal framework once again reflects its stated goals: competition, responsibility, and a digital ecosystem that serves the public — not just the companies that dominate it.

COMMON MISCONCEPTIONS

Section 230 was enacted with a legitimate and forward-looking purpose, and many objections to reform are raised in good faith. But it is essential to be clear about what is — and is not — being changed.

Concern 1: Reform Will Lead to Over-Moderation or Government Censorship

This white paper calls for carefully reclarifying Section 230(c)(1) to restore Congress's original limits. The fear that "any change to 230 breaks the internet" rests on a false premise: that the only alternative to today's sweeping immunity is full liability. Today, absent congressional clarification, large companies have stretched (c)(1) to claim sweeping immunity even when foreseeable harms stem from intentional product design, such as features that amplify self-

harm, stalking, harassment, or sexual exploitation. Reforming (c)(1) would not regulate speech or require companies to remove more content; it would simply require companies to take reasonable care in how their products are designed.

At the same time, preserving Section 230(c)(2) is essential to protect good Samaritan content moderation and ensures platforms can remove harmful or objectionable material without fear of liability.

Targeted clarification of Section 230(c)(1) does not empower the government to police speech, control viewpoints, or censor the internet. It preserves First Amendment protections while allowing courts to do what they already do in the physical world: distinguish between generally protected expression and generally unprotected conduct. **Some speech is not constitutionally protected, and some conduct may involve expression. Reform simply allows those well-established principles to be applied in the digital context through ordinary judicial process and due process protections.**

"Targeted clarification of Section 230(c)(1) does not empower the government to police speech, control viewpoints, or censor the internet. It preserves First Amendment protections while allowing courts to do what they already do in the physical world"

Concern 2: Clarifying Section 230 Will "Open the Floodgates" to Litigation

Some argue that clarifying Section 230 to allow more claims against interactive computer services, particularly large social media companies, will unleash a wave of frivolous lawsuits. Critics warn that smaller companies will be overwhelmed by legal costs, while dominant firms will simply absorb litigation as a cost of doing business, further entrenching their market power.

These concerns are overstated. Even under a clarified Section 230, plaintiffs would continue to face significant financial, evidentiary, and procedural barriers. Civil litigation in the United States is expensive and demanding; filing a complaint is not the same as surviving a motion to dismiss, reaching discovery, or prevailing at trial. Courts already possess robust tools to deter and dispose of meritless claims, including heightened pleading standards, early dispositive motions, and Rule 11 sanctions for frivolous or bad-faith filings.

Experience across other areas of tort and consumer protection law demonstrates that narrowing an immunity does not produce a litigation free-for-all. Pharmaceutical manufacturers face liability for defective design, failure to warn, and misrepresentation. That exposure did not collapse innovation or flood courts with baseless claims. Instead, it incentivized safer design, better disclosures, and post-market monitoring. Weak cases are routinely dismissed, while meritorious claims have exposed serious harms.

The same is true in transportation. Automakers are not immune when design defects cause foreseeable harm. The result has been seatbelts, airbags, recalls, and safer vehicles, with innovations often coming from smaller, upstart car companies. Companies are held accountable only when their own choices contribute to harm. Clarifying Section 230 would function the same way: it would not flood courts with meritless claims, but it would ensure that when a company's own products or business practices cause foreseeable harm, injured parties are not categorically barred from being heard.

Concern 3: Reform Will Stifle Innovation, Raise Costs, or Eliminate Popular Features

Nothing in this proposal requires companies to raise prices, shut down features, or stop innovating. If those outcomes occur, they will be the result of corporate choices, not legal requirements.

This proposal does not ban recommendation systems, feeds, messaging tools, or engagement features. It draws a line between having those features and designing them in ways that predictably produce harm. If a feature can be deployed responsibly, companies should be encouraged to do so. If it is intentionally engineered to exploit known vulnerabilities, amplify dangerous behavior, or drive compulsive use — particularly among children — the issue is not the feature's existence, but how it was designed and deployed. **That does not mean platforms automatically face liability for making design choices. It means that when serious harm occurs, courts are finally allowed to do their basic job to examine the facts, assess causation, and determine responsibility, just like with every other industry.**

Concerns about increased costs, especially for smaller companies, overlook how the current regime actually operates. Near-total immunity has favored the largest incumbents, enabling them to scale rapidly, extract massive amounts of data, and entrench market power while avoiding responsibility for the downstream effects of their design decisions. Smaller companies and new entrants are often disadvantaged precisely because they compete on trust, safety, or product quality rather than on scale and data extraction. A more balanced liability framework can lower barriers to entry by ensuring that competition is not driven by who can most effectively avoid accountability.

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Most importantly, the status quo itself stifles innovation. When companies face no consequences for foreseeable harm, there is little incentive to invest in safer design, alternative business models, or healthier user experiences. Blanket immunity has locked the industry into a narrow set of engagement-driven practices and discouraged experimentation with approaches that prioritize user well-being, competition, and democratic integrity. Reforming Section 230 as described in this white paper preserves what works while fixing what doesn't. It protects platforms when they host third-party speech and moderate in good faith, while making clear that companies remain responsible for their own design choices.

CONCLUSION

Section 230 is no longer functioning as Congress intended. What began as a narrow, carefully calibrated protection to encourage good-faith moderation and foster competition on an emerging internet has evolved into something far broader and more consequential: a near-automatic immunity that too often shields powerful companies from accountability for their own design choices, business practices, and knowingly facilitated harms.

There is a path forward. Section 230 can be repaired without dismantling its core protections. Congress can preserve what works while correcting the interpretations that have transformed a targeted shield into a blanket exemption from responsibility. In any other context — whether automobiles, pharmaceuticals, or consumer products — courts would be permitted to examine the evidence and determine responsibility. The digital environment should not be held to a lesser standard of accountability. The reforms proposed here are precise, measured, and grounded in legal principles that apply across every other sector of the economy.

At the same time, this proposal does not claim to catalogue or address every online harm. Issues such as fraud, exploitation, civil rights violations, and emerging forms of digital abuse raise distinct questions that warrant attention. This paper instead concentrates on proposing a good-faith, surgical reform to Section 230 and aims to correct misconceptions about the proposal, in order to open a broader debate. It is possible to create a Section 230 that preserves the good parts while improving on what doesn't work.

The consequences of inaction are deep and cutting. Families harmed by defective platform design will continue to be denied their day in court. Legal discovery will fail to move forward. Judges will remain constrained in developing a coherent jurisprudence around speech, conduct, and responsibility online. And companies will continue to face perverse incentives to prioritize growth and engagement over safety, knowing they can invoke Section 230 at the outset of litigation to avoid scrutiny altogether. When companies are insulated from meaningful accountability for how their systems amplify, recommend, and monetize content, the economic incentives tilt toward sensationalism, extremism, and virality over accuracy and trust. Over time, that imbalance erodes public confidence, undermines civic discourse, and threatens American democracy. Without recalibration, Section 230 does not simply shield companies from liability, rather it shapes the architecture of the digital public square in ways that carry profound consequences.

The courts have made clear that Congress must act. The Supreme Court has acknowledged the uncertainty surrounding Section 230's application to modern platforms, and lower courts are divided. The law has stalled while technology continues to evolve. Updating Section 230 is not about punishing companies or picking winners and losers. It is about reaffirming a simple principle that has always underpinned American law: powerful actors are not above accountability, and legal protections must evolve alongside the industries they govern.

Section 230 was written to help the internet grow up. Three decades later, it is time to update the law so that the internet — and the companies that shape it — can finally be subject to the same basic rules of responsibility that govern every other mature and consequential industry.

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