WHITE PAPER

UPDATING THE INTERNET

Restoring the Vision of Section 230

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INTRODUCTION

In 1994, the internet was still an experiment. At the beginning of the year, just 623 websites existed around the globe and the World Wide Web remained a little kingdom cloistered away with researchers, hobbyists, and early adopters.[1] By the end of the year, however, that number had exploded to nearly 10,000 websites and between January and December of 1995, the web grew to more than 100,000. This period marked the birth of the commercial internet: Amazon and eBay were founded, Netscape emerged as the first successful web startup, and its August 1995 initial public offering signaled that the internet was no longer a niche technology, but an economic force capable of transforming the United States.[2]

It was against this backdrop of rapid innovation that Congress enacted the Communications Decency Act of 1996 (CDA). At the time, policymakers sought to protect fledgling internet companies, encourage competition, and ensure that the United States could plant its flag firmly in the emerging global digital marketplace. Central to that effort was Section 230 of the CDA, which established two key provisions: Section 230(c)(1), governing the treatment of interactive computer services as publishers or speakers of third-party content, and Section 230(c)(2), the "Good Samaritan" provision, intended to encourage voluntary content moderation without exposing companies to liability.

The internet that Section 230 was designed to govern, however, bears little resemblance to the digital ecosystem that exists today. Nowhere is this transformation more evident than in the rise of modern social media platforms — many of which are strikingly young. Facebook, for example, was founded in 2004, just one year after MySpace launched in 2003. Twitter followed in 2006, Instagram in 2010, Snapchat in 2011, and TikTok in 2016. Yet in just two decades, these companies have amassed extraordinary economic, political, and social power. In January 2026, Meta, the parent company of Facebook and Instagram, had a market capitalization of around $1.66 trillion, larger than the GDP of all but fifteen of the 236 countries tracked by the International Monetary Fund.[3]

1. Richard MacManus, "What the Internet was Like in 1994," Cybercultural, March 5, 2025, cybercultural.com/p/internet-1994.
2. Sir Tim Berners-Lee, "History of the Web," World Wide Web Foundation, webfoundation.org/about/vision/history-of-the-web.
3. "Meta Platforms, Inc. (META)," Yahoo! Finance, accessed January 31st, 2026, https://finance.yahoo.com/quote/META; "GDP by Country (2026) — IMF," Worldometer, worldometers.info/gdp/gdp-by-country/?source=imf&year=2026&metric=nominal&re-

Today, more than half of American adults and 85% of young people get their news from social media.[4] Without a doubt, these companies are powerful actors whose design decisions influence which stories, viewpoints, and voices are amplified — and which are suppressed or buried. They shape how users encounter news, who they interact with, and what ideas gain traction or go viral. Section 230, therefore, is not simply a matter of liability or corporate accountability; it is a foundational element of the health of the online information ecosystem and, by extension, of American democracy.

The internet's transformation over thirty years means that the legal framework governing platform liability must now be updated. Section 230 has been wielded by technology and social media companies to evade responsibility for harms that flow directly from their product design, algorithmic amplification, and business models. Unlike other industries, which are routinely held accountable when they design defective products or harm consumers, social media companies have been treated as exceptional. The result is a system in which social media companies shape American democracy and yet face little legal consequence for conduct that would be actionable in nearly any other sector.

Section 230 was created for good reasons, but the way it is applied today goes far beyond what Congress intended. What started as a narrow protection to encourage responsible moderation has turned into a sweeping shield that blocks accountability at the threshold.

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This paper does not call for repealing Section 230 or for pre-determining the outcome of cases. It makes a more practical claim: **the parts of Section 230 that work can and should be preserved, while the parts that have been stretched beyond recognition should be corrected.** The paper (1) traces Congress's original intent, (2) explains how judicial interpretation has drifted from that purpose, (3) proposes a targeted and comprehensive update to realign the statute, and (4) directly addresses the most common concerns raised about reform.

Importantly, allowing courts to hear claims about harmful product design will not cause the internet to collapse. Updating Section 230 does not mean social media companies will shut down or that online communities will close; it means that the most powerful companies can no longer evade scrutiny and accountability simply by invoking Section 230 at the outset. Free expression can be protected, good-faith moderation can be encouraged, and Section 230 can be strengthened — not weakened — by restoring responsibility.

This paper represents a first step in the broader process of reform. Americans face a wide range of harms online — from scams and financial fraud to sexual exploitation and illicit trafficking. Addressing these challenges will require sustained attention and deeper examination of how changes to Section 230 could affect these areas. The discussion that follows should therefore be understood as an effort to move past the notion of Section 230 as a political "third rail" and begin an honest conversation about practical solutions.

gion=worldwide.

4. "Social Media and News Fact Sheet," Pew Research Center, pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/; Ray Day, "What the Data Says: 85% of young people get their news from social media," stagwellglobal.com/what-the-data-say-85-of-young-people-get-their-news-from-social-media.

WHAT DID CONGRESS INTEND?

Congress created Section 230 to help computer services avoid a moderator's dilemma and to protect good samaritans of the internet. Lawmakers did not want companies to be forced to choose between moderating every post or avoiding moderation altogether to escape liability. The statute was meant to encourage good-faith efforts to remove harmful content — not to grant blanket immunity regardless of a platform's own conduct.

Two opposing lawsuits drove this desire: *Cubby v. CompuServ Inc.* and *Stratton Oakmont, Inc. v. Prodigy Services Co.* In *Cubby,* the plaintiff sued CompuServe in 1990 for libel after a daily online newsletter, Rumorville, published allegedly defamatory statements about a competing newspaper owned by the plaintiffs on a CompuServe-hosted forum. The plaintiffs alleged that CompuServe had agreed to "manage, review, create, delete, edit, and otherwise control" the content of its forums and therefore should be treated as a publisher.[5]

In defamation law there are two familiar terms: "publishers" and "distributors." On one hand, publishers, like newspapers, are generally held to a higher standard of liability because they are presumed to have knowledge of, or control over, the content they share.[6] Distributors, like newsstands and libraries, are generally not liable unless they knew or had reason to know that the material they made available was defamatory.[7]

In *Cubby,* the plaintiffs argued that CompuServe functioned as a publisher because it retained the ability to manage and review forum content and could have removed the defamatory material. CompuServe countered that it was merely a distributor, exercising no more editorial control "than does a public library, bookstore, or newsstand."[8] The Southern District of New York agreed, holding that CompuServe was a distributor and dismissing the claims because the service lacked actual knowledge of the defamatory content.[9]

Just five years later, however, the question resurfaced in *Stratton.* Like CompuServe, Prodigy hosted online message boards where users could create anonymous accounts and post messages. In October 1994, one user accused Stratton Oakmont — an investment banking firm — and its president of criminal and fraudulent conduct.[10] Stratton Oakmont sued both the user and Prodigy for libel. Once again, a familiar scene played out. Stratton Oakmont claimed that Prodigy should be treated as a publisher because it actively enforced content rules, including bans on obscenity, across its message boards. Prodigy responded in turn that it was merely a distributor and should not be held responsible for what users posted. This time, however, the court came to a very different conclusion. In a sharp break from *Cubby,* the New York Supreme Court held Prodigy liable precisely because it tried to moderate its platform. By posting content guidelines, using community moderators to enforce them, and deploying software to filter offensive language, Prodigy was found to be exercising control and therefore could be treated as a publisher.[11]

5. Cubby, Inc. v. CompuServe Inc., 776 F. Supp. 135, 135 (S.D.N.Y. 1991).
6. *Restatement (Second) of Torts § 558.*
7. *Id.* § 581(1) & cmts. e–f (1977).
8. Cubby, Inc., 776 F. Supp., at 135.
9. *Id.*
10. Stratton Oakmont, Inc. v. Prodigy Services Co., 23 Media L. Rep. 1794 (N.Y. Sup. Ct. 1995).
11. *Id.*

At the same time that *Stratton* was decided in 1995, Congress was locked in a fierce debate over the Telecommunications Act of 1996 — a legislative package aimed at, in part, incorporating the internet into the regulatory regimes of broadcasting and telephones. The *Stratton* ruling landed with a shock on Capitol Hill, and for good reason. The decision created an impossible dilemma for young internet companies. If an interactive computer service wished to avoid liability, they would be forced to either abandon content moderation, censor users, or stop hosting third-party content altogether. **Either way, companies were trapped.** Senator Dan Coats (R-IN) captured the problem clearly when he introduced the Communications Decency Act of 1996 (CDA) — as an amendment to the Telecommunications Act — describing the situation as a "catch-22" for online services.[12]

In response, Representatives Christopher Cox (R-CA) and Ron Wyden (D-OR) introduced Section 230 as an amendment to the Communications Decency Act, titled "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material." Cox emphasized that the goal was to protect "computer Good Samaritans" from liability, as Prodigy had faced in New York.[13] Congress recognized that the Prodigy standard would discourage content moderation and hinder the internet's growth. In a recent interview, **Cox reaffirmed, "The original purpose of [Section 230] was to help clean up the Internet, not to facilitate people doing bad things on the Internet."**[14] When the law was prepared to pass, Cox insisted "We want to encourage people like Prodigy, like CompuServe... to do everything possible for us, the customer, to help us control, at the portals of our computer, at the front door of our house, what comes in and what our children see."[15] Wyden explained that the law's key purpose was to ensure that companies, in exchange for Section 230 protections, acted responsibly in policing their platforms.[16] Congress's original intent was clear: to foster a vibrant, speech-protective online environment by encouraging platforms to moderate in good faith.

Taken together, *Cubby* and *Stratton* exposed a narrow but urgent problem: how to encourage responsible moderation without turning platforms into publishers for everything users say. Section 230 was Congress's answer to that problem — and only that problem. It was designed to prevent liability a platform chose to moderate. It was not intended to absolve companies of responsibility for their own conduct, design choices, or business decisions. By protecting good-faith efforts to screen and remove harmful content, Congress sought to promote a safer and more vibrant internet, not to create a blanket immunity regime. Understanding this targeted purpose is essential to evaluating how far modern interpretations of Section 230 have strayed from what Congress originally intended and why an update is essential.

"It was designed to prevent liability just because a platform chose to moderate. It was not intended to absolve companies of responsibility for their own conduct, design choices, or business decisions."

12. Senator Coats, speaking on the Communications Decency Act, on June 14, 1995, 104th Cong., 1st sess., *Congressional Record* 141, S 8345. govinfo.gov/app/details/CREC-1995-06-14/CREC-1995-06-14-pt1-PgS8310-3.
13. U.S. Congress, Senate, Committee on Commerce, Science, and Transportation, *Telecommunications Competition and Deregulation Act of 1995*, 104th Cong., 1st sess., 1995, S. Rep. 104-23, 59. congress.gov/committee-report/104th-congress/senate-report/23/1.
14. Alina Selyukh, "Section 230: A Key Legal Shield For Facebook, Google Is About To Change," NPR, March 21, 2018. npr.org/sections/alltechconsidered/2018/03/21/591622450.
15. Jeff Kosseff, "Correcting a Persistent Myth About the Law that Created the Internet," The Regulatory Review, July 15, 2019. www.theregreview.org/2019/07/15/kosseff-correcting-persistent-myth-about-law-that-created-the-internet/.
16. Danielle K. Citron, "Section 230's Challenge to Civil Rights and Civil Liberties," Knight First Amendment Institute at Columbia University, April 6, 2018. knightcolumbia.org/content/section-230s-challenge-civil-rights-and-civil-liberties.

WHAT WENT WRONG?

Although Section 230 was originally intended to protect good-faith content moderation, courts have since interpreted the statute so expansively that it now functions as a near-total immunity shield for social media companies — even when their product design, algorithms, or decisions directly contribute to harm. The consequences are staggering. Today, companies have attempted to apply Section 230 to cases involving unlicensed gun selling,[17] drug trafficking,[18] child trafficking,[19] terrorist recruitment,[20] dangerous viral challenges targeting children,[21] non-consensual intimate imagery,[22] domestic terrorism,[23] and much more. Just as pernicious, the broad immunity routinely ends cases before the discovery process ever begins. Families are denied access to internal research, safety testing, and design documents that could establish what companies knew and how their products caused harm. The same dynamic undermines lawmakers when they pass carefully narrowly tailored, design-based legislation. Social media companies routinely sue to block good-faith laws and stop implementation, arguing that they are insufficiently tailored, while simultaneously withholding the very internal data and research lawmakers would need to tailor them in the first place.[24]

The modern interpretation of Section 230 has stretched a statute written for a dial-up-era bulletin board across more than thirty years of rapid technological innovation. Instead, the provision has been applied it wholesale to modern platforms like Facebook that function simultaneously as marketplaces, messaging services, advertising networks, and recommendation engines.

This mismatch is especially stark because the internet itself has fundamentally changed over 30-years. Today, it is no longer a collection of static posts shared among friends or strangers on message boards. Rather, the internet is a highly curated environment that is deliberately designed to maximize time spent online. Attention is the commodity that drives the modern internet, especially among social media companies. The industry makes thousands of design choices that shape what users see, when they see it, and how they respond. For example, push notifications are engineered to pull users back in, infinite scroll eliminates natural stopping points, friend and location maps intensify social pressure, and recommendation systems manipulate user psychology with intermittent bursts of dopamine. Users are navigating a product that actively steers attention, behavior, and interaction in order to maximize time spent on the platform and, therefore, advertising revenue. **Treating the resulting harms as if they were caused solely by third-party speech ignores the central role companies now play in structuring their products and locks the law into a version of the internet that no longer exists.**

"Users are navigating a product that actively steers attention, behavior, and interaction in order to maximize time spent on the platform and, therefore, advertising revenue."

17. *See, e.g.*, Daniel v. Armslist, LLC, 926 N.W.2d 710 (Wis. 2019).
18. *See, e.g.*, Neville v. Snap, Inc., No. 22STCV33500 (Cal. Super. Ct., Los Angeles Cnty. Oct. 2022).
19. *See, e.g.*, Doe v. Backpage.com, 817 F.3d 12 (1st Cir. 2016).
20. *See, e.g.*, Gonzalez v. Google LLC, 598 U. S. 617 (2023).
21. *See, e.g.*, Tawainna Anderson v. TikTok Inc, No. 22-3061 (3d Cir. 2024).
22. *See, e.g.*, New Mexico Department of Justice. "Attorney General Raúl Torrez Files Unredacted Complaint Against Snapchat, Exposing Internal Messages that Snap Knowingly Contributed to Harm Amongst Children." October 2, 2024. nmdoj.gov/press-release/31302.
23. *See, e.g.*, Zeran v. America Online, Inc., 958 F. Supp. 1124, 1124 (E.D. Va. 1997).
24. *See, e.g.*, Isabel Sunderland, "Big Tech's Legal Firewall." *The Reform Compass.* June 25, 2025. https://thereformcompass.substack.com/p/big-techs-legal-firewall.

Despite the evolution, courts have continued to apply Section 230 as if little has changed. The expansive interpretation emerged through a series of judicial decisions that have steadily broadened the statute's reach. One of the earliest and most consequential cases, for example, was in 1997 with *Zeran v. America Online, Inc.* The Fourth Circuit held that an interactive service like AOL could not be treated as the "publisher or speaker" or even as a distributor of user-generated content, even after it had knowledge of harmful postings. The decision has consequently laid the groundwork for courts to extend immunity far beyond Congress's original intent, despite cases like *Fair Housing Council, et al. v. Roommates.com* attempting to limit the interpretation.[25]

In *Herrick v. Grindr*, Section 230 immunity was upheld for a dating app whose design facilitated impersonation and sexual assault. Matthew Herrick's former partner created a fake profile in his name, soliciting aggressive sexual encounters without his consent. Over ten months, more than 1,400 men — including as many as 23 in a single day — arrived at Herrick's home and workplace.[26] Herrick's roughly 50 requests for help went unanswered by the company. The lawsuit focused on Grindr's own product defects and operational failures — not the content posted by Herrick's former partner — and argued that the company should not be entitled to Section 230 immunity.[27]

Specifically, the plaintiff highlighted how Grindr's interface and features enabled users to create fake profiles, directly facilitating harassment, assault, and other harms. The court, however, treated these design choices as mere "publishing" of third-party content rather than evaluating the company's responsibility for its platform, and ruled that Section 230 barred the claims. As a result, the court dismissed the case without ever examining whether Grindr's own design and operational decisions contributed to the harm.

The same reasoning has been applied in dozens of cases, including notably *Lemmon v. Snap*. In the case, Snapchat's "Speed Filter," which lets users capture photos or videos showing how fast they are going, resulted in the death of three teenage boys who after using the filter to reach speeds of up to 123 miles per hour in a car.[28] The plaintiffs argued that Snapchat knowingly designed a defective product that encouraged dangerous behavior. Many users believed the app rewarded "recording a 100-MPH or faster snap," and Snapchat was aware of the phenomenon. The issue was widely reported in news articles, an online petition called on Snapchat to address its role in encouraging speeding, and multiple accidents and lawsuits had already been linked to these practices.[29]

The district court, however, dismissed the lawsuit under Section 230, reasoning that the plaintiffs were trying to hold Snap responsible for failing to regulate what users posted through the filter. The court treated the Speed Filter as merely a tool for publishing user content. In the court's eyes while, theoretically, someone could use the filter privately without posting anything, in practice the feature exists to create sharable content. Because the filter was inherently tied to generating posts, the court concluded that Section 230 barred the lawsuit — even though the feature itself actively encouraged dangerous behavior.[30]

25. Zeran., 958 F. Supp., at 1124; see e.g., Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. 2008).
26. "Matthew Herrick v Grindr LLC," C.A. Goldberg, cagoldberglaw.com/matthew-herrick-v-grindr-llc.
27. Herrick v. Grindr, LLC, No. 1:2017cv00932 - Document 63 (S.D.N.Y. 2018).
28. Lemmon v. Snap, Inc., 995 F.3d 1085 (9th Cir. 2021).
29. *Id.*
30. *Id.*

Treating design features as "third-party content" fundamentally distorts the purpose of Section 230, which was meant to protect good-faith moderation, not to shield companies from the consequences of their own product decisions. Algorithms, infinite scroll, push notifications, friend maps, and similar elements are deliberate design choices. **When courts label these features as third-party speech that platforms cannot be held liable for, they ignore the reality that companies control how these features function, which content is amplified, and how users interact online.**

This would never pass muster in the physical world. Consider the landmark 1972 case *Grimshaw v. Ford Motor Company*. In the lawsuit, Ford was accused of defectively designing the Ford Pinto. The case arose from a crash in San Bernardino, California that killed 52-year-old Lily Gray and severely injured 13-year-old Richard Grimshaw. Evidence from the trial showed that Ford rushed the vehicle into production and that "styling preceded engineering and dictated engineering design to a greater degree than usual."[31] Critical safety tests were ignored, corners were cut to reduce costs, and company leadership knew the design posed serious risks but approved it anyway. The jury rightly held Ford liable for designing a defective product.

If an automaker knowingly designs a dangerous product, it cannot evade accountability by claiming it was merely "expressing itself" through design choices. Nor can it claim that all crashes are simply the result of poor driver behavior. Courts treat product design as conduct, not speech, and impose liability accordingly. **In the digital world, immunizing product design decisions under Section 230 is the functional equivalent of letting a carmaker escape responsibility for a deadly defect.**

The courts needs statutory clarification. In L*emmon v. Snap*, the ninth circuit reversed the district court's decision that Section 230 barred the claims and argued that Congress did not intend for companies to receive a "get out of jail free card."[32] In 2024, the third circuit in *Anderson v. TikTok* — a lawsuit where 10-year old Nylah Anderson died after attempting the "blackout challenge" — held that TikTok's algorithmic recommendation system reflected operational choices, not merely user speech, recognizing that actively curating, amplifying, or structuring content constitutes a company's own conduct.[33]

At the same time, in *Gonzalez v. Google,* the Supreme Court explicitly called on Congress to clarify Section 230, noting the uncertainty surrounding its application to design and algorithmic decisions.[34] Without legislative guidance, courts are deciding similar cases inconsistently, leaving plaintiffs, companies, and lower courts without a clear standard for when a company's own conduct falls outside Section 230 immunity.

What was intended as a protective shield for the internet's good Samaritans has instead become a powerful incentive for companies to 'move fast and break things' without fear of accountability. While decisions like *Anderson v. TikTok* represent a positive step by recognizing that platforms can be held responsible for harmful product design, such exceptions remain rare, costly, and difficult for plaintiffs to pursue. **Americans should not have to spend years and millions of dollars simply to have their claims heard.** Congress must clarify Section 230 and reaffirm the good-faith protections it was originally meant to provide.

31. Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757 (Cal. Ct. App. 1981).
32. Lemmon v. Snap, Inc., 995 F. 3d 1085 (9th Cir. 2021).
33. Anderson v. TikTok Inc, No. 22-3061 (3d Cir. 2024).
34. Gonzalez., 598 U. S., at 617.

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.[35]

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-

35. 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.[36] 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.[37]

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.[38] 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.[39]

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

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

address it.[40] 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."[41] 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."[42] *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.[43] 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

40. *Restatement (Second) of Torts § 558.*
41. Zeran., 958 F. Supp., at 1124.
42. *Id.*
43. 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.[44] 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.[45]

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.

44. *See, e.g.*, Gonzalez., 598 U. S., at 617.
45. 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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