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Reforming Section 230

Section 230 is a complicated, confusing, and arguably outdated law that could be improved with a few modifications. The foundational component of the law, granting websites immunity from liability for user-posted content, remains necessary to allow free speech. However, this immunity creates an ethical and social dilemma, allowing sites to overlook illegal and harmful content without any consequences. One reform to 230 should include requiring websites to moderate and take down content that is illegal or harmful, expanding on FOSTA-SESTA. Another reform should mandate that websites take action on user-submitted take-down requests for defamatory or malicious posts, which would provide a balance between legal protections for the site with the ethical obligations to protect its users from harm.

Section 230 of the Communications Decency Act was written with the intention of promoting free speech online by granting websites immunity from liability for user posted content. While this blanket immunity is critical in preventing websites from constantly being sued for content posted by their users on their site, the online platforms often exploit this immunity to avoid responsibility for moderating their sites, even with content that is illegal or harmful. In 2018 the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) amended section 230 to hold websites liable for sex trafficking and prostitution content posted on their websites, which motivates websites to take down said content to avoid being sued. FOSTA-SESTA covers a very narrow range of content that online platforms can be liable for allowing to remain on their sites. Section

230(c)(1) should be amended to expand the liability website owners should face to include defamatory and malicious content such as non-consensual intimate images, stalking, or harassment.

Online platforms that have a large number of users might have a hard time moderating every post that users create on their site for malicious content, especially if the content is not necessarily illegal, or if it is not obvious the post is untruthful/defamatory. One solution to this problem would be to create a system similar to the Digital Millennium Copyright Act (DMCA), but for defamatory, malicious, or illegal content. The DMCA establishes a clear and effective notice and takedown process that allows infringing copyrighted material to be removed without undermining user's free expressions. This reform would relieve website owners of the unrealistic burden of moderating and verifying every user post while still establishing accountability and preserving users' right to free speech. A user would submit a formal complaint, including why the post is defamatory/harmful, which the online platform would be required to view and take action within a certain time frame. This approach creates incentives for platforms to remove flagged content from their website to retain their 230 immunities, shifting the focus from proactive, impossible-to-scale site moderation to user-driven moderation. This solution should also reduce the number of section 230 lawsuits and maintain the balance between the website's liability shields and their ethical obligations to protect their users from abuse and harm.

Section 230(c)(2) gives online platforms legal protection when they moderate or restrict content that they believe to be harmful, offensive, or otherwise inappropriate as

long as they act in good faith. It also protects platforms that provide tools or services to help users filter or block offensive material on their own (for example, parental controls or content filters). This gives the freedom to moderate their platforms to take down hate speech, misinformation, nudity, or spam without being sued for censoring users. The “good faith” clause is key. It means that moderation decisions must be made honestly and with reasonable judgment, not to silence certain viewpoints unfairly. The content that websites remove is often controversial or political. The problem is that when it comes to political posts, there will almost always be one side that doesn’t agree with the user’s post, and wants it taken down. The law does not require neutrality; it does not force platforms to treat all viewpoints equally. If the content is taken down, the opposing side will view the takedown as censorship and a violation of their free speech. Legally, the platform is protected under 230(c)(2).

A reform to section 230(c)(2) should focus on how websites handle controversial or politically charged content, balancing user protections and the right to free expression. Online platforms play an important role in shaping public discourse and they should allow political discussions when they are relevant to the website’s purpose rather than suppressing them outright. Political posts that are off-topic or disruptive to unrelated spaces, such as political debates in a children's entertainment forum, should be removed to maintain community focus. To protect users that might find such content offensive without infringing on others’ rights, websites could implement features to hide these controversial posts behind content warnings, allowing users to decide whether to view the posts. Additionally, transparency in moderation decisions, such as providing users with

clear explanations when a user's post has been flagged or hidden, would help build trust and accountability. This balanced approach would preserve free speech, encourage civil and relevant discourse, and create a fair compromise between censorship overreach and the chaos of unregulated expression.

Section 230 was created to protect free expression in online platforms, but the internet has evolved far beyond what it used to be when section 230 was created back in 1996. While its core purpose, shielding websites from liability for user-posted content, remains essential to protecting free speech, the law now struggles to address the ethical and social challenges of today's internet. Expanding on the foundation created by FOSTA-SESTA, reforms should require websites to act responsibly by moderating illegal or harmful content and by establishing a fair takedown process for malicious or defamatory material. Likewise, reforms to section 230(c)(2) should promote transparency and balance in moderating controversial or politically charged posts, ensuring users' free expression is preserved by flagging sensitive content instead of prohibiting these discussions. These reforms would not dismantle internet free speech but modernize it by creating an environment that values both free expression and accountability. By updating section 230 to reflect the realities of today's digital landscape, lawmakers can preserve its original intent while fostering a safer, more ethical, and more trustworthy internet for everyone.