

Alerts & Publications

CDA Section 230: Its Past, Present, and Future

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When Congress enacted the Communications Decency Act in 1996—including the once-esoteric provision known as Section 230—the world had yet to tweet or tag, follow or friend, like, or DM. The internet was alive but felt new, mysterious, and still not very social. Sites that allowed users to post and interact with content were just beginning to emerge, raising for the first time questions about how to protect people (especially children) from offensive material on a medium whose lack of regulation was for many part of the draw while also preserving the internet’s vibrancy and potential. The provision designed to navigate those crosscurrents is Section 230.

Section 230 protects platforms from liability when they act as hosts for third-party speech. If a user posts defamatory or inflammatory statements, Section 230 shields the website from liability for that user’s statements unless certain conditions are met. And if a website considers a user’s post objectionable and removes it, Section 230 generally insulates the website from legal risk. Together, these protections encourage internet platforms to foster innovation and free speech while also incentivizing content moderation and removal. In essence, then, Section 230 shields websites from legal liability for both over- and under-filtering user content.

For years, Section 230 was seen as striking the right balance between encouraging free expression and protecting content moderation. More recently, however, the benign view of Section 230 has dissolved and the once-obscure statute has leaped onto the front pages, taking fire from all directions. Calls for reform or repeal have drowned out praise for Section 230. It is therefore timely to take the measure of Section 230 and explore the legal, constitutional, political, and competitive dynamics that have propelled it to the forefront of national consciousness and political controversy.

First, we explore Congress’s initial motivations for enacting the statute and how Section 230’s protections intersect with the First Amendment. Next, we discuss the Supreme Court’s recent denial of the *Malwarebytes* petition for certiorari, which opens the possibility that the Court could grant review in a more “appropriate” Section 230 case, as well as other legal developments. We then address the Department of Justice’s report

last year on Section 230, which recommended amendments to the statute, but will now fall to a new Attorney General to adopt or reject, before turning to the international landscape for Section 230-like issues. We also review recently proposed legislative reforms and explain how these bills might affect tech companies and their users. We take a closer look at President Trump's "Executive Order on Preventing Online Censorship," which proposed to curtail Section 230's immunities. And, finally, we offer a glimpse into the Biden Administration's potential views of Section 230 and possible changes.

*Read: CDA Section 230:
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